

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4
5

FACEBOOK, INC.,)

6)

Plaintiff,)

7) Case No.

vs.) 5:08-cv-05780 JW (JCS)

8)

POWER VENTURES, INC., a)

9 Cayman Island Corporation;)

STEVE VACHANI, an individual;)

10 DOE 1, d/b/a POWER.COM,)

DOES 2-25, inclusive,)

11)

Defendants.)

12 _____)

13

14

15 CONFIDENTIAL

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17 VIDEOTAPED DEPOSITION of POWER VENTURES,
18 INC.'S 30(b)(6) Designee STEVEN VACHANI taken on behalf
19 of Plaintiff, at Orrick, Herrington & Sutcliffe LLP, 405
20 Howard Street, 10th Floor, San Francisco, California
21 beginning at 9:13 a.m., Monday, January 9, 2012, before
22 CHERREE P. PETERSON, RPR, CRR, Certified Shorthand
23 Reporter No. 11108.
24
25

1 A P P E A R A N C E S

2

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EXAMINATION BY:	PAGE
MR. CHATTERJEE	10

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<p>1 SAN FRANCISCO, CALIFORNIA</p> <p>2 JANUARY 9, 2012</p> <p>3 ---oOo---</p> <p>4 BE IT REMEMBERED that set on Monday, the 9th</p> <p>5 day of January, 2012, commencing at the hour of 9:13</p> <p>6 a.m., at the office of Orrick, Herrington & Sutcliffe</p> <p>7 LLP, 405 Howard Street, 10th Floor, San Francisco,</p> <p>8 California, before me, Cherree P. Peterson, RPR, CRR,</p> <p>9 CSR No. 11108, a Certified Shorthand Reporter,</p> <p>10 personally appeared</p> <p>11 POWER VENTURES, INC.'S 30(b)(6) Designee</p> <p>12 STEVEN VACHANI,</p> <p>13 having been called as a witness by the plaintiff, who</p> <p>14 having been sworn by me to tell the truth, the whole</p> <p>15 truth and nothing but the truth, was thereupon examined</p> <p>16 and testified as hereinafter set forth.</p> <p>17 ---oOo---</p> <p>18 (Plaintiff's Exhibit No. 188 marked for</p> <p>19 identification.)</p> <p>20 THE VIDEOGRAPHER: Good morning. My name is</p> <p>21 Lindsay Lewis. I'm a certified legal video specialist</p> <p>22 today for Barkley Court Reporters. Barkley Court</p> <p>23 Reporters is located at 222 Front Street, Suite 600, in</p> <p>24 San Francisco, California. Today is January 9th, 2012.</p> <p>25 The time is 9:13 a.m. We are located today at 405</p> <p style="text-align: right;">Page 9</p>	<p>1 Q. Is there anything that would impede your</p> <p>2 ability to testify truthfully and accurately today?</p> <p>3 A. No.</p> <p>4 Q. Have you reviewed your previous deposition</p> <p>5 since it was -- when it was taken I think in July of</p> <p>6 2011?</p> <p>7 A. I have seen it and reviewed it.</p> <p>8 Q. And is -- I can't remember off the top of my</p> <p>9 head, did you make any changes to that deposition?</p> <p>10 A. I think we probably should review it one more</p> <p>11 time, because we've never had a chance to go through it</p> <p>12 in depth. But I have seen it.</p> <p>13 MR. FISHER: He's asking you a different</p> <p>14 question.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MR. FISHER: He's asking --</p> <p>17 THE WITNESS: I reviewed it.</p> <p>18 MR. FISHER: -- if any changes have been made</p> <p>19 to the deposition.</p> <p>20 THE WITNESS: I don't believe any changes have</p> <p>21 been made to the deposition at this point.</p> <p>22 Q. BY MR. CHATTERJEE: As you sit here today do</p> <p>23 you recall anything about your previous testimony that</p> <p>24 you want to change or that you believe is inaccurate?</p> <p>25 A. I don't. But I would like to reserve the</p> <p style="text-align: right;">Page 11</p>
<p>1 Howard Street on the 10th floor in San Francisco,</p> <p>2 California. This videotaped deposition of Power</p> <p>3 Ventures, Inc. is taken today on behalf of the</p> <p>4 plaintiffs in the case captioned Facebook, Inc. versus</p> <p>5 Power Ventures, Inc. et al., case number 5:08-cv-05780</p> <p>6 JW.</p> <p>7 Will counsel for the parties please identify</p> <p>8 themselves now for the record.</p> <p>9 MR. FISHER: Timothy Fisher for Power and</p> <p>10 Steve Vachani.</p> <p>11 MR. CHATTERJEE: Neel Chatterjee for Facebook.</p> <p>12 And also with me is Bahar, B-a-h-a-r, Metanat,</p> <p>13 M-e-t-a-n-a-t, for Facebook. And both of us are with</p> <p>14 the Orrick firm.</p> <p>15 THE VIDEOGRAPHER: Thank you. The court</p> <p>16 reporter will now swear in the witness.</p> <p>17 THE REPORTER: Raise your right hand, please.</p> <p>18 (Whereupon the witness was placed under oath.)</p> <p>19 EXAMINATION BY MR. CHATTERJEE</p> <p>20 Q. Good morning, Mr. Vachani. We've met I think</p> <p>21 once before.</p> <p>22 A. Yes.</p> <p>23 Q. It's nice to see you. You understand you're</p> <p>24 under oath today?</p> <p>25 A. Yes, I do.</p> <p style="text-align: right;">Page 10</p>	<p>1 right to review it one more time with -- while I'm out</p> <p>2 here with Tim on this trip. Is my -- hopefully before</p> <p>3 the case.</p> <p>4 Q. And -- and you understand that we are -- we</p> <p>5 are taking your testimony here. Should you make any</p> <p>6 substantive changes to that transcript, we reserve the</p> <p>7 right to seek further deposition of you as well as to</p> <p>8 comment upon any of those substantive changes at trial?</p> <p>9 A. I understand. I'm not saying that I have any</p> <p>10 changes, but I just want to reserve that right and so --</p> <p>11 and to review it one more time.</p> <p>12 Q. I have one question out of curiosity from it.</p> <p>13 Not -- not -- not terribly, terribly relevant, but I saw</p> <p>14 references in the transcript to something called nevo,</p> <p>15 n-e-v-o. And you were talking about aggregation of</p> <p>16 instant messages and things like that in your</p> <p>17 deposition.</p> <p>18 A. Nevo or Meebo?</p> <p>19 Q. I was about to ask you. Were you referring to</p> <p>20 Meebo --</p> <p>21 A. I would assume it's Meebo. I don't know what</p> <p>22 nevo is.</p> <p>23 Q. So one thing I'm going to do is I'm going to</p> <p>24 remind you of one of the instructions from your previous</p> <p>25 deposition. It's really, really important for clarity</p> <p style="text-align: right;">Page 12</p>

<p>1 of the record for you to let me finish my question and</p> <p>2 for you to answer the question after I've completed it.</p> <p>3 And it's okay if you pause a little bit. And I will</p> <p>4 pause when I'm done with my question. The reason for</p> <p>5 that is the deposition will take a lot longer if -- if</p> <p>6 we talk over each other. Because I'm going to work</p> <p>7 really hard to make sure the record is very, very clear</p> <p>8 here on a number of the issues. Is that all right with</p> <p>9 you?</p> <p>10 A. That's okay.</p> <p>11 Q. And I'm going to assume if I ask a question</p> <p>12 and you answer it that you understand the question. You</p> <p>13 don't find it ambiguous. So if -- if there is something</p> <p>14 about my question that's not clear to you, will you let</p> <p>15 me know if -- if there is something ambiguous about it?</p> <p>16 A. Yes.</p> <p>17 Q. I have a pretty rigid formula for depositions,</p> <p>18 which is a little bit different than your one that you</p> <p>19 took with Monte. I will break within an hour to an hour</p> <p>20 and 15 minutes pretty regularly, unless there's a</p> <p>21 specific line of questioning I want to finish. This is</p> <p>22 not an endurance test. If you need to take a break for</p> <p>23 a biological purpose or just because you're getting</p> <p>24 tired, let me know and I'll try to honor that. The only</p> <p>25 time I might be a little less flexible is if I need to</p> <p style="text-align: right;">Page 13</p>	<p>1 excerpts of previous depositions.</p> <p>2 Q. And whose other depositions?</p> <p>3 A. Which depositions did you -- did you provide</p> <p>4 me?</p> <p>5 MR. FISHER: I can't --</p> <p>6 Q. BY MR. CHATTERJEE: Testify to --</p> <p>7 MR. FISHER: What you know.</p> <p>8 Q. BY MR. CHATTERJEE: Testify to the best of</p> <p>9 your recollection.</p> <p>10 A. I believe I -- I saw -- I referenced Zak, Zak</p> <p>11 Mandhro's deposition.</p> <p>12 Q. Anyone else?</p> <p>13 A. There was Zak Mandhro, Robert Pollock, and Ed</p> <p>14 Niehaus.</p> <p>15 Q. Did you read all of the depositions --</p> <p>16 A. No.</p> <p>17 Q. -- or certain excerpts?</p> <p>18 A. I didn't even -- didn't read them, except I</p> <p>19 read excerpts of one or -- of two of them.</p> <p>20 Q. So which ones did you read excerpts of?</p> <p>21 A. I read excerpts of Rob Pollock's and Zak</p> <p>22 Mandhro's.</p> <p>23 Q. You didn't read any of Mr. Niehaus'?</p> <p>24 A. I didn't get around to it.</p> <p>25 Q. Okay. Did you review any documents to prepare</p> <p style="text-align: right;">Page 15</p>
<p>1 finish a line of questioning. Is that all right with</p> <p>2 you?</p> <p>3 A. That's okay.</p> <p>4 Q. Okay. So let's go ahead and get started. I</p> <p>5 put in front of you Exhibit No. 188. Do you see that</p> <p>6 document?</p> <p>7 A. Yes, I do.</p> <p>8 Q. This is a notice of deposition of Power</p> <p>9 Ventures pursuant to Federal Rule of Civil Procedure</p> <p>10 30(b)(6). Do you understand that you are testifying</p> <p>11 today as a corporate designee of Power Ventures as to</p> <p>12 the topics that are listed in that notice?</p> <p>13 A. Yes, I do.</p> <p>14 Q. And you understand that the testimony you give</p> <p>15 today is binding on Power Ventures as to the things that</p> <p>16 -- the topics that are listed in those -- in the notice?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Have you reviewed that notice?</p> <p>19 A. I have reviewed it.</p> <p>20 Q. Okay. And did you do anything to prepare to</p> <p>21 testify as the corporate designee of Power ventures?</p> <p>22 A. I have met with counsel today for about one</p> <p>23 hour, from 8:00 a.m. to 9:00 a.m.</p> <p>24 Q. Anything else?</p> <p>25 A. Beyond -- I read this notices and I read</p> <p style="text-align: right;">Page 14</p>	<p>1 for your deposition as a corporate designee?</p> <p>2 A. You're talking about recently or in the past?</p> <p>3 I mean, in the past I have reviewed many of the</p> <p>4 documents that have been exchanged of evidence. But</p> <p>5 nothing in the last few days.</p> <p>6 Q. Okay. So my question was really, really</p> <p>7 precise. Was -- in preparation for your testimony as a</p> <p>8 corporate designee, did you review any documents to</p> <p>9 prepare yourself?</p> <p>10 A. I did not.</p> <p>11 Q. Okay. Have you talked with Eric Santos during</p> <p>12 the course of this litigation about how, for example,</p> <p>13 the -- the PowerScript code operated?</p> <p>14 MR. FISHER: Objection. Vague.</p> <p>15 THE WITNESS: Have I talked to him during this</p> <p>16 investigation about how it operated?</p> <p>17 Q. BY MR. CHATTERJEE: Correct.</p> <p>18 A. I've -- I've talked -- the answer is not</p> <p>19 recently, but I've obviously in the past had many</p> <p>20 conversations on -- on the PowerScript code with Eric.</p> <p>21 Q. What about within the past year?</p> <p>22 A. In the past year I have not talked about the</p> <p>23 PowerScript code. I've had very specific e-mails when</p> <p>24 there have been in the past questions like where I've</p> <p>25 asked him one or two questions when they've come up in</p> <p style="text-align: right;">Page 16</p>

<p>1 the case. And some -- sometimes he's answered if he's</p> <p>2 had the time. Other times he has not answered.</p> <p>3 Q. Okay. Other than reviewing excerpts of Mr.</p> <p>4 Mandhro and Mr. Pollock's depositions, did you do</p> <p>5 anything else to prepare to testify as the corporate</p> <p>6 designee at Power Ventures?</p> <p>7 A. I -- I reviewed the -- the recent what do you</p> <p>8 call it -- what do we refer -- the statements that have</p> <p>9 been exchanged the last two months by Facebook. And</p> <p>10 they -- I -- I forget what we call them.</p> <p>11 Q. The summary judgment motions?</p> <p>12 A. The summary judgment motions, I have</p> <p>13 reviewed -- reviewed those.</p> <p>14 Q. Okay. So anything else?</p> <p>15 A. To my best recollection, no.</p> <p>16 Q. Okay. So let's start with Mr. Mandhro. What</p> <p>17 did you review from Mr. Mandhro's depositions?</p> <p>18 A. I just glanced through the -- the transcript.</p> <p>19 Q. So there wasn't a specific excerpts you were</p> <p>20 reading, you just kind of --</p> <p>21 A. I just glanced through it to see, you know,</p> <p>22 the general line of questioning and discussions that</p> <p>23 were discussed in that conversation.</p> <p>24 Q. Was there anything that you read in there that</p> <p>25 you disagreed with?</p> <p style="text-align: right;">Page 17</p>	<p>1 A. No. I just -- I was not preparing for the</p> <p>2 deposition. I was reviewing them because they were</p> <p>3 available.</p> <p>4 Q. Okay.</p> <p>5 A. It was not specifically to prepare for this</p> <p>6 deposition. I had seen -- seen what was available I had</p> <p>7 not seen before, and I out of curiosity was just</p> <p>8 reviewing to see what new data might be available.</p> <p>9 Q. So just -- just to make this clear. To the</p> <p>10 extent you reviewed Mr. Mandhro's deposition, you don't</p> <p>11 recall anything that -- that you read there that you</p> <p>12 disagreed with?</p> <p>13 A. Actually, that -- there were things in there</p> <p>14 that I would like to spend more time in, but I don't --</p> <p>15 to -- to review as I thought that the line of</p> <p>16 questioning -- I can't remember specifically because it</p> <p>17 was so quickly. But it would be -- after further review</p> <p>18 there may be some -- some issues on there that I have to</p> <p>19 discuss with counsel. We have not had the chance to.</p> <p>20 So I'd like to reserve the right to, you know, review</p> <p>21 that in more detail.</p> <p>22 Q. So your answer is right now you don't know?</p> <p>23 A. I don't know.</p> <p>24 Q. Okay. And what about with respect to Mr.</p> <p>25 Pollock's deposition, anything from your short review</p> <p style="text-align: right;">Page 19</p>
<p>1 A. No. What, that I -- not that I -- my best of</p> <p>2 my recollection I had a very minimal time. I was -- I</p> <p>3 only received it in the last two days. And I've been on</p> <p>4 a flight for the last 48 hours due to huge flight</p> <p>5 problems. So I have not really had a significant time</p> <p>6 to -- to review it in detail.</p> <p>7 Q. Are you prepared to testify as the corporate</p> <p>8 designee today given the limited time you've had?</p> <p>9 A. I'm prepared, yeah.</p> <p>10 Q. And -- and you don't need to know anything</p> <p>11 about what Mr. Mandhro said in order -- in order for you</p> <p>12 to testify as the corporate designee?</p> <p>13 A. I've reviewed -- I reviewed that, Mr.</p> <p>14 Mandhro's. I have not reviewed Ed Niehaus'. And Rob's,</p> <p>15 I have more sparsely reviewed his.</p> <p>16 Q. But my question's a little simpler than that.</p> <p>17 A. Yeah.</p> <p>18 Q. Do you need to review those depositions in</p> <p>19 order to feel that you are fully prepared to testify on</p> <p>20 behalf of Power Ventures as to the topics we've</p> <p>21 identified?</p> <p>22 A. I do not.</p> <p>23 Q. So without disclosing any privileged</p> <p>24 conversations, why were you reviewing those to prepare</p> <p>25 for your deposition?</p> <p style="text-align: right;">Page 18</p>	<p>1 there that you recall reviewing that you disagree with?</p> <p>2 A. I think there may be things that I need to get</p> <p>3 clarification from counsel on those before answering</p> <p>4 that question.</p> <p>5 Q. Okay. As you sit here today, is there</p> <p>6 anything that you recall from reviewing Mr. Pollock's</p> <p>7 deposition?</p> <p>8 A. My review was too limited to -- to be able</p> <p>9 to respond to that. I did -- I believe that there were</p> <p>10 comments -- some comments in there that I -- that --</p> <p>11 that were based on things that he had limited knowledge</p> <p>12 of and that he was pushed to answer that I need to</p> <p>13 review in more detail to -- and talk with counsel.</p> <p>14 Q. And what were those?</p> <p>15 A. I -- there were -- it was just -- it was</p> <p>16 literally too quickly to specifically -- I'd like to</p> <p>17 actually take the time at some point to -- to ask -- to</p> <p>18 ask -- to ask questions to counsel on that.</p> <p>19 Q. But as you sit here today, you're unaware of</p> <p>20 any specific things that Mr. Pollock said?</p> <p>21 A. As I have read -- I have not read 90 -- 80</p> <p>22 percent of that document.</p> <p>23 Q. So you don't know?</p> <p>24 A. So I don't know is the answer.</p> <p>25 Q. Okay. And same answer with respect to Mr.</p> <p style="text-align: right;">Page 20</p>

<p>1 Niehaus, you don't know whether or not there's anything 2 in his testimony that -- that -- that you as a corporate 3 designee of Power Ventures might disagree with? 4 A. At this point, no. I -- if after further 5 review, that could change. 6 Q. Okay. How long ago did you review the summary 7 judgment motions? 8 A. Those were in the last -- in the last -- in 9 the last month. 10 Q. Can you tell me anything specifically that you 11 recall -- well, first of all, were you reviewing those 12 in order to deal with the oppositions or the positions 13 taken by Power Ventures in order to prepare for this 14 depo? 15 MR. FISHER: And I'm going to caution you not 16 to disclose the content of any communications you had 17 with counsel regarding those papers. 18 THE WITNESS: I just was reviewing them to -- 19 to review conversations that had taken place and what we 20 had -- finally were delivering. 21 Q. BY MR. CHATTERJEE: And you submitted 22 declarations both in support of Power Ventures and your 23 personal motions as well as an opposition? 24 A. Correct. 25 Q. You reviewed those carefully?</p> <p style="text-align: right;">Page 21</p>	<p>1 point, the last question that you just asked, which was 2 the Facebook thing, I think that the one thing that I 3 found was just a lot -- there's a lot of information and 4 there seemed to be, you know, many -- many different 5 references to things that I think have been at time -- 6 times, you know, twisting information that hopefully 7 will be, you know, clarified, you know, as with this 8 case progresses I think there were many case -- times 9 that Facebook has in their things stretched or, you 10 know, twisted information that were not exactly things 11 that I've said. But I -- again, because of the amount 12 of details and everything else, I don't think that 13 that's something that I'm prepared to go into the 14 details today. 15 Q. Okay. So -- so -- so listen really carefully 16 to my question. 17 A. Okay. 18 Q. And I know this is hard and it's not a 19 normal -- 20 A. Yeah. 21 Q. -- process. My question was, was there 22 anything in the summary judgment motion's papers that 23 you were reviewing in order to prepare to testify on the 24 topics in the notice? 25 A. No.</p> <p style="text-align: right;">Page 23</p>
<p>1 A. Yes, I did. 2 Q. You ensured their accuracy? 3 A. I did. 4 Q. And were those done to the best of your 5 recollection or do you actually believe the facts in 6 there to be true? There's a difference. 7 A. I believe them to be true. 8 Q. Okay. With respect to the -- the -- the 9 motions for summary judgment, was -- do you recall 10 anything specific from those motions as to Facebook's 11 positions that you disagreed with? 12 A. That I disagreed with? 13 Q. Correct. 14 MR. FISHER: I'm going to object as vague. 15 Calling for a legal conclusion. 16 THE WITNESS: I think it's a lot of -- we're 17 dealing with a lot of details and a lot of facts in this 18 case. And to try to answer that with dealing with 19 literally, I don't know, hundreds, maybe thousands, it 20 would be too difficult to answer that. 21 Q. BY MR. CHATTERJEE: Okay. Is there anything 22 that was submitted in the -- in the summary judgment 23 motion that you -- you felt you needed to review to 24 prepare for your deposition today on these topics? 25 A. So what I just -- in the last -- on the last</p> <p style="text-align: right;">Page 22</p>	<p>1 Q. Is there any topic that's listed in Exhibit 2 188 -- and you can -- you can take a look through them 3 if you need to -- that you felt you were not able to 4 testify about? 5 A. I feel I can testify on these topics. I don't 6 know the level of specificity that you're going to go in 7 some of the technical details, so -- but I'm familiar 8 with all these subjects. But there are definitely areas 9 that I was not specifically managing on a day-to-day 10 basis. And if that were to come up, I'll let you know. 11 Q. Okay. Appreciate that. And I'm going to try 12 and expedite that particular issue right now for you. 13 Hopefully if -- I think where this is going to go, it 14 will make it a lot easier. 15 We can mark that Exhibit 189. 16 (Plaintiff's Exhibit No. 189 marked for 17 identification.) 18 Q. BY MR. CHATTERJEE: Mr. Vachani, what I've 19 handed you as Exhibit 189 is a declaration that you 20 submitted in opposition to Facebook's motion to compel 21 documents. Is this your signature at the bottom? 22 A. Yes, it is. 23 Q. And this -- this declaration was truthful and 24 accurate when you submitted it? 25 A. Yes.</p> <p style="text-align: right;">Page 24</p>

<p>1 Q. In the second paragraph you stated "Power has 2 already produced the actual source code it used to 3 access Facebook's website. The source code as well as 4 the other documents Power has produced in this case such 5 as the PowerScript Training documents and PowerScript 6 Documentation Developer Manual show precisely how Power 7 accessed Facebook's website." These "documents 8 constitute the best possible information Power has to 9 understand how Power accessed Facebook's website." 10 Do you see that? 11 A. Yes. 12 Q. Okay. So that statement was accurate when you 13 made it? 14 A. Yes. 15 Q. Is it fair to say that the -- the actual 16 source code that Power has produced in this case is the 17 best evidence of what Power did and how it was doing it 18 with respect to the Facebook web site? 19 MR. FISHER: Objection. Vague. 20 THE WITNESS: I believe we've provided 21 everything that we had available. So -- so therefore 22 everything that was possibly available as we provided, 23 therefore that's the best that could be provided. 24 MR. CHATTERJEE: Okay. Could you read the 25 question back, please.</p> <p style="text-align: right;">Page 25</p>	<p>1 Q. If the code operated one way and your 2 testimony or your recollection was that it operated a 3 different way, isn't it fair to say that the code is a 4 better indicator of how the software worked than your 5 recollection? 6 MR. FISHER: Objection. Vague. Assumes facts 7 not in evidence. 8 THE WITNESS: The code provides rules on how 9 things can be done. There could be scripts that are 10 written. There -- there could be actions by -- there's 11 so many -- there are layers and levels in the -- in any 12 type of code. So that's what I'm saying. The code is 13 -- it is what it is. 14 Q. BY MR. CHATTERJEE: So let me ask you, what 15 did you mean in your declaration when you said "Those 16 documents constitute the best possible information Power 17 has to understand how Power accessed" the "Facebook's 18 website"? 19 A. Exactly what we said there. 20 Q. Explain it to me. Because now you're running 21 away from that statement. 22 A. I'm not running away -- 23 MR. FISHER: Objection. Argumentative. 24 THE WITNESS: I'm not running away from that 25 statement. I'm saying that the code -- that -- that</p> <p style="text-align: right;">Page 27</p>
<p>1 (Whereupon the record was read as requested.) 2 THE WITNESS: All I can -- as I said, we've 3 provided everything that's avail -- 4 Q. BY MR. CHATTERJEE: I'm not asking a discovery 5 question -- 6 A. Yeah. 7 Q. -- Mr. Vachani. 8 A. Okay. 9 Q. I'm asking the question of is the source 10 code -- 11 A. Yeah. 12 Q. -- the best evidence of what Power Ventures 13 did with respect to the Facebook web site? 14 MR. FISHER: Objection. Vague. 15 THE WITNESS: I don't -- I don't know. I 16 don't know the answer if the source code is the best 17 evidence. That's a -- I think a subjective opinion. 18 Q. BY MR. CHATTERJEE: Okay. So let me -- I'll 19 -- let me explore that a little bit. 20 A. Sure. 21 Q. In your deposition that Mr. Cooper took, you 22 characterized the way that some of the Power Ventures 23 software worked. You recall testifying generally about 24 that? 25 A. Yes.</p> <p style="text-align: right;">Page 26</p>	<p>1 existed and it provides -- you can interpret that as 2 best as you want. We provided you code, the company's 3 code. We've provided everything that -- that's 4 available. 5 Q. BY MR. CHATTERJEE: Okay. 6 A. And I have answered every question in the past 7 in previous statements. So what I've said in those 8 previous statements I -- I stand by. 9 Q. Okay. So let me ask it again. If your 10 testimony differ from what the actual source code used 11 to access Facebook's web site shows -- 12 A. Yes. 13 Q. -- which one of those two is the best possible 14 information Power has to understand how Power accessed 15 Facebook's web site? 16 MR. FISHER: Objection. Vague. Assumes facts 17 not in evidence. Incomplete hypothetical. 18 Argumentative. Asked and answered. 19 THE WITNESS: I think this, again, you're 20 getting into hypothetical statements here. We've 21 provided the code. You know what it does. I've told 22 you in the past what it does. I've answered many 23 questions and many answers on this. I don't know what 24 -- what you're trying to -- 25 Q. BY MR. CHATTERJEE: What I'm trying -- what</p> <p style="text-align: right;">Page 28</p>

<p>1 I'm trying to understand is if there's an inconsistency 2 between the two. Is -- 3 A. Can you clarify? Is there any inconsistency 4 with what? 5 MR. FISHER: Let him finish his question. 6 Q. BY MR. CHATTERJEE: If there's an 7 inconsistency between the two. And I'll give you an 8 example. 9 A. Okay. Please. 10 Q. For example, if there is an automated 11 authentication process that -- that existed in the Power 12 Ventures code base, the code actually implemented that, 13 and you had testified that there was no such 14 functionality, which one of those is -- is the best 15 evidence of how Power accessed Facebook's web site? 16 MR. FISHER: Objection. Assumes facts not in 17 evidence. Lacks foundation. 18 THE WITNESS: So let me -- 19 MR. FISHER: Incomplete hypothetical. Vague. 20 THE WITNESS: Let me clarify. If -- If a 21 source -- if the ability to do something exists in the 22 code, it doesn't mean that something was actually done. 23 The -- you know, for example, there exists many 24 functions that could record, you know, actions or 25 things, but they may have never been utilized. In fact,</p> <p style="text-align: right;">Page 29</p>	<p>1 every -- we've provided code. But I'm -- but what your 2 statements today are trying -- at least the way I 3 understand your questions, you're trying to imply that 4 this would -- that what's in the code means that is 5 something that we did on Facebook's site. That's -- 6 those are two different things. It may be the best way. 7 But what -- what we've done on the Facebook site in fact 8 has been answered in all our -- in depositions, 9 questions, answers, over the last three years. So.... 10 Q. BY MR. CHATTERJEE: So I'm just asking a 11 simple question -- 12 A. Okay. 13 Q. -- Mr. Vachani. You made a statement in this 14 declaration. "Those documents constitute the best 15 possible information Power has to understand how Power 16 accessed Facebook's website." That statement was true, 17 correct? 18 A. That statement is true. 19 Q. Okay. And now you're also saying that there 20 are aspects of Power's code base that may not have been 21 used by Power. Is that fair? 22 A. I'm saying that there are -- when you have 23 code, there are unlimited possibilities in what you can 24 -- those -- what you actually do with it. That doesn't 25 mean everything in our code was -- was utilized on the</p> <p style="text-align: right;">Page 31</p>
<p>1 most of the things that -- that are in the code doesn't 2 mean that they were actually done. And so I think to 3 try to imply that because something is in the code it -- 4 that it has anything to do with Facebook or access to 5 Facebook. And that's probably a better answer to what 6 I'm trying to say is you're trying to -- it seems that 7 what you're trying to say, you're trying to say that 8 because something exists in our ability in the code to 9 do it that it somehow has -- means that it -- that these 10 things were done. And that's why actions or activities 11 are different than what might be possible in the source 12 code. 13 Q. BY MR. CHATTERJEE: So what you're saying is 14 -- is if you look at the last sentence of your 15 declaration where you said "Those documents constitute 16 the best possible information Power has to understand 17 how Power accessed Facebook's website," was that 18 statement then inaccurate because the code may or may 19 not have actually been implemented or used? 20 MR. FISHER: Objection. Mischaracterizes 21 prior testimony. Argumentative. 22 THE WITNESS: No. 23 MR. FISHER: Vague. 24 THE WITNESS: It says the best possible -- I'm 25 talking how it accessed the web site. We've provided</p> <p style="text-align: right;">Page 30</p>	<p>1 Facebook -- on the Facebook site. There are two 2 different things. 3 And I'll give you a specific example. There 4 exists in our database, for example, a thing that would 5 track messages sent by -- by -- if a -- if a user wanted 6 to send an invitation to a friend, for example. This 7 code exists and even a database log exists. But at that 8 time back in December whatever, we never sent a single 9 message. So that -- that -- that thing was empty or, 10 you know, that -- but -- but the ability to send 11 messages existed. Just because something exists doesn't 12 mean -- you know, at times I've seen that Facebook 13 has -- has made irresponsibly and sometimes incorrectly 14 statements saying that we did something because our code 15 -- because the capability existed. And that's -- that's 16 what I'm trying to say. 17 Q. Okay. Move to strike as nonresponsive. 18 Mr. Vachani, is the statements made in 19 paragraph 2 accurate? 20 MR. FISHER: Asked and answered. 21 Argumentative. 22 THE WITNESS: So I'll read it again. We have 23 produced the actual source codes. That's correct, we 24 have produced the source code. And the source code does 25 show how we accessed -- how we accessed the site, at</p> <p style="text-align: right;">Page 32</p>

<p>1 least. So I think the statement is correct.</p> <p>2 Q. Okay.</p> <p>3 A. But you asked --</p> <p>4 Q. Hold on. Okay. I need you to answer my</p> <p>5 questions. I don't need you volunteering information.</p> <p>6 We're going to be here for days if that happens.</p> <p>7 A. Okay.</p> <p>8 Q. That statement is correct?</p> <p>9 A. That statement is correct.</p> <p>10 Q. And it is accurate?</p> <p>11 A. It is accurate.</p> <p>12 Q. Is there any other information that I would</p> <p>13 need beyond the things that you have said in paragraph 2</p> <p>14 to know how Power accessed Facebook's web site?</p> <p>15 A. No.</p> <p>16 Q. Okay. Let's go to the second issue. I'm</p> <p>17 going to talk about the event invitations that were sent</p> <p>18 through the Facebook system. Do you know what I'm</p> <p>19 talking about when I refer to that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Okay. Now, would the -- would the actual</p> <p>22 source code that was used to -- to facilitate the</p> <p>23 creation of those event invitations, would those be the</p> <p>24 best possible information Power has to understand how</p> <p>25 Power accessed Facebook's web site?</p> <p style="text-align: right;">Page 33</p>	<p>1 was not used. But if you have a specific question, I</p> <p>2 would be happy to answer those -- those questions -- the</p> <p>3 question today.</p> <p>4 Q. So can you tell me what they are to the best</p> <p>5 of your recollection?</p> <p>6 MR. FISHER: Objection. Asked and answered.</p> <p>7 THE WITNESS: So you want to know that if we</p> <p>8 -- ask the question again.</p> <p>9 Q. BY MR. CHATTERJEE: Okay. To the best of your</p> <p>10 you recollection, what functionality in the Power code</p> <p>11 was not used with respect to accessing Facebook's web</p> <p>12 site or sending event invitations?</p> <p>13 A. I cannot tell you what was not used, but I can</p> <p>14 tell you what was used. Because what's not used</p> <p>15 there's -- as I said, source code provides endless</p> <p>16 possibilities. But it's better to say what we did do.</p> <p>17 I think you're -- it's --</p> <p>18 Q. Okay. Tell me what you did do.</p> <p>19 A. Users authorized us to create an event for</p> <p>20 them to promote -- to promote the -- a Power -- a Power</p> <p>21 event. And they authorized us and we acted on those</p> <p>22 instructions and created an event very similar to --</p> <p>23 I'll give you when a user is inside an app on Facebook,</p> <p>24 like FarmVille, and they say I'd like to create --</p> <p>25 create an activity or whether ads on my wall or an event</p> <p style="text-align: right;">Page 35</p>
<p>1 MR. FISHER: Objection. Vague. Assumes facts</p> <p>2 not in evidence.</p> <p>3 THE WITNESS: Again, I believe source --</p> <p>4 source code says what you're able to do. It -- it says</p> <p>5 what you're able to do. Statements that have been --</p> <p>6 questions that have been asked about what we've done I</p> <p>7 believe in depositions and other statements that we've</p> <p>8 provided in the past have provided more detail on that.</p> <p>9 But source code does not necessarily tell you what was</p> <p>10 done. It -- it tells you what you're able -- what --</p> <p>11 what -- it tells you the rules that -- the rules that --</p> <p>12 what -- what is possible.</p> <p>13 MR. CHATTERJEE: Okay. The court reporter</p> <p>14 read my question back, please.</p> <p>15 (Whereupon the record was read as requested.)</p> <p>16 THE WITNESS: So I would say the answer is</p> <p>17 yes, together with the questions that you -- the -- that</p> <p>18 have been answered in depositions under -- under oath</p> <p>19 and have been provided to you in the past.</p> <p>20 Q. BY MR. CHATTERJEE: As you're sitting here</p> <p>21 today can you identify what functionality in the Power</p> <p>22 code was not used with respect to accessing Facebook's</p> <p>23 web site or sending event invitations?</p> <p>24 A. There's a large amount of code, and I</p> <p>25 cannot -- I cannot answer to you what was used and what</p> <p style="text-align: right;">Page 34</p>	<p>1 and they then post that on a wall. It's pretty much</p> <p>2 very similar type of -- type of action. We -- we were</p> <p>3 authorized by users who were using one of our apps to --</p> <p>4 to create an event or to create a posting on -- on the</p> <p>5 walls or event pages on Facebook and then completed</p> <p>6 those actions at their -- at their request.</p> <p>7 That's -- I'll finish. I believe that's the</p> <p>8 best way to answer the questions. Because to go and say</p> <p>9 all the possibilities of what exists in the source code</p> <p>10 is -- is -- is completely inappropriate because there</p> <p>11 are unlimited possibilities based on source code.</p> <p>12 MR. CHATTERJEE: Okay. Let's mark this as</p> <p>13 Exhibit 190.</p> <p>14 (Plaintiff's Exhibit No. 190 marked for</p> <p>15 identification.)</p> <p>16 Q. BY MR. CHATTERJEE: Mr. Vachani, what I've</p> <p>17 handed you marked as Exhibit 190 is Power Ventures'</p> <p>18 supplemental responses to Facebook's interrogatory</p> <p>19 certain numbers. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. If you look at the supplemental response to</p> <p>22 interrogatory number 1, which is on page 2.</p> <p>23 A. Okay.</p> <p>24 Q. Oh. Let me -- let me just ask you. If you</p> <p>25 look at the very last page. I'm sorry. It's the third</p> <p style="text-align: right;">Page 36</p>

<p>1 to last page. There's a verification there.</p> <p>2 A. Okay.</p> <p>3 Q. And -- and -- and that's your signature on the</p> <p>4 page?</p> <p>5 A. Yes.</p> <p>6 Q. You took efforts to ensure that the statements</p> <p>7 in the interrogatory were truthful and accurate?</p> <p>8 A. Yes.</p> <p>9 Q. And is -- is there anything about these</p> <p>10 interrogatories as best as you recall that -- that you</p> <p>11 think was inaccurate or needed further detail to ensure</p> <p>12 that they weren't misleading?</p> <p>13 A. To the best of my knowledge. Obviously</p> <p>14 there's a lot of information that goes on. But to the</p> <p>15 best of my knowledge these are correct.</p> <p>16 Q. Okay. So in interrogatory number 1, the</p> <p>17 statement asks "Describe in detail AND IDENTIFY the</p> <p>18 process by which POWER accesses OR accessed the FACEBOOK</p> <p>19 WEBSITE." Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And if you look in the supplemental response</p> <p>22 in the second paragraph, Power referred to its source</p> <p>23 code produced on 8-23-11 and 9-14-11. Do you see that?</p> <p>24 A. Correct.</p> <p>25 Q. And it states "The source code is the primary</p> <p style="text-align: right;">Page 37</p>	<p>1 Q. Okay. Is there any particular reason you</p> <p>2 didn't put that in the interrogatory response as to the</p> <p>3 portions that weren't used?</p> <p>4 MR. FISHER: Objection. Vague.</p> <p>5 Argumentative.</p> <p>6 THE WITNESS: So I think that there are -- I</p> <p>7 said this already earlier. I said there are unlimited</p> <p>8 possibilities with code. Just be -- you create rules</p> <p>9 that you can do unlimited things. This might be the</p> <p>10 best source to understand what is possible. And that's</p> <p>11 why we've stated this here. And, you know, this is the</p> <p>12 best source that we can provide for you to understand</p> <p>13 our code, what we can do and -- but if you want to know</p> <p>14 what was specifically done, a source -- you know, that</p> <p>15 -- that's not -- that's not in a document. We did not</p> <p>16 -- there are also depositions that we've also clarified.</p> <p>17 Q. BY MR. CHATTERJEE: Okay.</p> <p>18 A. Which we have referred to.</p> <p>19 Q. Where in this interrogatory response do you</p> <p>20 refer to any deposition testimony?</p> <p>21 A. I'm not referring to. Those -- those exist</p> <p>22 and are on file.</p> <p>23 Q. Mr. Vachani, where in this interrogatory do</p> <p>24 you refer to any deposition testimony?</p> <p>25 MR. FISHER: Objection. Argumentative. Asked</p> <p style="text-align: right;">Page 39</p>
<p>1 source material, as it contains the exact functions and</p> <p>2 technical mechanisms through which Power accessed the</p> <p>3 Facebook Website."</p> <p>4 Do you see that?</p> <p>5 A. Correct.</p> <p>6 Q. Statement was truthful and accurate?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And then you say, "Additionally, Power</p> <p>9 refers to documentation stored in Power's subversion</p> <p>10 repository," "produced on 10/24/11."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Is there any particular reason you</p> <p>14 didn't refer to any of the discussions you and I just</p> <p>15 had about what aspects of Power's code may or may not</p> <p>16 have been used in order to access the Facebook web site?</p> <p>17 MR. FISHER: Objection. Vague.</p> <p>18 THE WITNESS: So ask the question again,</p> <p>19 please.</p> <p>20 Q. BY MR. CHATTERJEE: Okay. Earlier today in</p> <p>21 your testimony you said that there are some portions of</p> <p>22 the code that were used and some portions of the code</p> <p>23 that were not used in accessing the Facebook web site.</p> <p>24 Correct?</p> <p>25 A. Correct.</p> <p style="text-align: right;">Page 38</p>	<p>1 and answered.</p> <p>2 THE WITNESS: I don't believe we referred to</p> <p>3 deposition testimony in this file.</p> <p>4 Q. BY MR. CHATTERJEE: Okay. You said in</p> <p>5 response on this interrogatory that you verified "The</p> <p>6 source code is the primary source material, as it</p> <p>7 contains the exact functions and technical mechanisms</p> <p>8 through which Power accessed the Facebook website."</p> <p>9 Correct?</p> <p>10 A. That's correct.</p> <p>11 Q. You didn't talk about an entire infinite range</p> <p>12 of possibilities, did you?</p> <p>13 A. Nope.</p> <p>14 Q. You talked about this is the way that Power</p> <p>15 accessed the Facebook web site in the response, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Was it right or wrong what you answered in</p> <p>18 this question?</p> <p>19 MR. FISHER: Argumentative. Asked and</p> <p>20 answered.</p> <p>21 THE WITNESS: What I'm saying is this is</p> <p>22 correct. All I said is that in the source code there</p> <p>23 are many possibilities that are things that are capable</p> <p>24 of doing that we did not do. That's all I was saying.</p> <p>25 Q. BY MR. CHATTERJEE: Is Power Ventures willing</p> <p style="text-align: right;">Page 40</p>

<p>1 to live with the statement that it made here in this</p> <p>2 interrogatory response as the exclusive evidence of how</p> <p>3 Power accessed or accessed the Facebook web site?</p> <p>4 MR. FISHER: Argumentative. You don't have to</p> <p>5 answer that question. Move on, Neel.</p> <p>6 THE WITNESS: I'd like to move on.</p> <p>7 Q. BY MR. CHATTERJEE: Is there anything about</p> <p>8 this answer you want to change?</p> <p>9 A. I would -- I think we can move on.</p> <p>10 Q. I think you need to answer the question, Mr.</p> <p>11 Vachani. Is there anything about this interrogatory</p> <p>12 response that you want to change as you sit here today?</p> <p>13 MR. FISHER: Argumentative.</p> <p>14 Q. BY MR. CHATTERJEE: You're here as a designee</p> <p>15 for the corporation.</p> <p>16 A. That's correct.</p> <p>17 Q. Is this an accurate statement or not?</p> <p>18 A. This is an accurate statement.</p> <p>19 MR. FISHER: Asked and answered.</p> <p>20 Q. BY MR. CHATTERJEE: Is there anything else in</p> <p>21 this response that you want to add?</p> <p>22 MR. FISHER: Asked and answered.</p> <p>23 THE WITNESS: I don't think --</p> <p>24 MR. FISHER: Argumentative.</p> <p>25 THE WITNESS: -- there's nothing else that I</p> <p style="text-align: right;">Page 41</p>	<p>1 conclusion.</p> <p>2 Q. BY MR. CHATTERJEE: So beyond what the answer</p> <p>3 here, is there any information that I would need to</p> <p>4 figure out the process by which Power accessed or access</p> <p>5 Facebook web site?</p> <p>6 MR. FISHER: Objection. Argumentative. Asked</p> <p>7 and answered.</p> <p>8 THE WITNESS: I've -- what I've said today is</p> <p>9 that I believe that -- whether the -- the depositions</p> <p>10 were referred to. Questions have been asked to clarify</p> <p>11 source code. I -- I think that clarification or further</p> <p>12 detail on source code and our site have been asked in</p> <p>13 previous depositions. And I think logically that those</p> <p>14 things have been asked to get either clarification and</p> <p>15 they're often referencing source code or referencing</p> <p>16 actions. And I believe that -- that our depositions are</p> <p>17 also a source of data. So if --</p> <p>18 Q. BY MR. CHATTERJEE: So --</p> <p>19 A. If -- let me finish, please. So if you -- if</p> <p>20 want -- if you believe that making a reference to say</p> <p>21 that those -- those could provide further detail, you're</p> <p>22 welcome. I -- I -- I would be okay with you making that</p> <p>23 -- that reference.</p> <p>24 Q. I'm -- I'm not -- I'm not being asked to do</p> <p>25 anything here. I'm just asking you as the corporate</p> <p style="text-align: right;">Page 43</p>
<p>1 need -- there's nothing else that I need to add here.</p> <p>2 Q. BY MR. CHATTERJEE: Okay. So if I'm looking</p> <p>3 at the documents and the things that are referred in</p> <p>4 here, this is the process by which Power accessed or</p> <p>5 access the Facebook web site, correct?</p> <p>6 MR. FISHER: Asked and answered.</p> <p>7 Argumentative.</p> <p>8 THE WITNESS: This -- this is the -- the code</p> <p>9 that -- that -- this is the primary code that we -- that</p> <p>10 any actions that were taken were done. I've said that</p> <p>11 already. This --</p> <p>12 MR. CHATTERJEE: Could you read the question</p> <p>13 back, please.</p> <p>14 (Whereupon the record was read as requested.)</p> <p>15 THE WITNESS: This is the primary source</p> <p>16 material. Source code is the primary source material.</p> <p>17 That's what it says right here. That's what we've --</p> <p>18 we've already stated.</p> <p>19 Q. BY MR. CHATTERJEE: Right. And you understand</p> <p>20 that when your counsel designated things pursuant to</p> <p>21 Federal Rule of Civil Procedure 33(d), that means that</p> <p>22 we can figure out what was actually done as well as you</p> <p>23 can. Do you understand that's what it means?</p> <p>24 A. I understand.</p> <p>25 MR. FISHER: Objection. Calls for a legal</p> <p style="text-align: right;">Page 42</p>	<p>1 designee as to accuracy. Is there anything about this</p> <p>2 interrogatory response that needs to be changed to</p> <p>3 ensure a full, complete, and accurate response to</p> <p>4 interrogatory number 1?</p> <p>5 MR. FISHER: Asked and answered.</p> <p>6 THE WITNESS: Do you mind if I refer to my</p> <p>7 counsel for any -- any clarification of this?</p> <p>8 Q. BY MR. CHATTERJEE: I'd like you to answer it.</p> <p>9 A. But do you mind? Can I take a moment to refer</p> <p>10 to counsel?</p> <p>11 Q. I'd like to you to answer it. You can have a</p> <p>12 conversation with your counsel. If you need to change</p> <p>13 it later, you can.</p> <p>14 A. Well, I'd prefer to speak to counsel.</p> <p>15 Q. I want you to answer the question. Is there</p> <p>16 anything about the interrogatory response --</p> <p>17 A. Am I allowed to speak to my counsel?</p> <p>18 Q. You can during a break. But I -- remember</p> <p>19 what I said before --</p> <p>20 A. Can I -- can I take --</p> <p>21 Q. I need you --</p> <p>22 A. Can I take a break?</p> <p>23 Q. I want you to finish and answer the question.</p> <p>24 Is there anything about interrogatory number 1 and the</p> <p>25 response that you think needs to be changed as you sit</p> <p style="text-align: right;">Page 44</p>

<p>1 here right now?</p> <p>2 A. So, Neel, let me -- let me ask this again. I</p> <p>3 believe that you're trying to get a clarification that</p> <p>4 I -- I'm not a legal expert. And I don't know how my</p> <p>5 depositions and -- and a specific supplement response</p> <p>6 relate together. And I'm not an expert and I don't want</p> <p>7 to make a statement that's incorrect. So I would -- I</p> <p>8 would ask you again, I'd like to take a five-minute</p> <p>9 break --</p> <p>10 Q. All right.</p> <p>11 A. -- and refer to my counsel.</p> <p>12 Q. Let's do it.</p> <p>13 THE VIDEOGRAPHER: We are going off the</p> <p>14 record. The time is 9:52 a.m.</p> <p>15 (Whereupon a break was taken from 9:52 to</p> <p>16 9:56.)</p> <p>17 THE VIDEOGRAPHER: We are back on the record.</p> <p>18 The time is 9:56 a.m.</p> <p>19 (Whereupon the record was read as requested.)</p> <p>20 THE WITNESS: No. I believe I stand by this.</p> <p>21 Q. BY MR. CHATTERJEE: If you can take a look at</p> <p>22 interrogatory number 7. Is that statement and the</p> <p>23 response interrogatory number 7 complete and accurate?</p> <p>24 A. Yes.</p> <p>25 Q. Is there anything about that response that's</p> <p style="text-align: right;">Page 45</p>	<p>1 Q. BY MR. CHATTERJEE: Well, it says "The person</p> <p>2 responsible for Power's conduct in this regard was its</p> <p>3 Chief Executive Officer, Steve Vachani." I mean, you</p> <p>4 Steve Vachani.</p> <p>5 A. Well, a CEO normally has -- is the final --</p> <p>6 final accountability and responsibility in which the</p> <p>7 standard -- standard way a CEO is responsible.</p> <p>8 Q. Okay. To kind of close the loop on -- on the</p> <p>9 code issue, if you had testified that certain</p> <p>10 functionality existed with respect to kind of Power's</p> <p>11 mechanisms for accessing the Facebook web site and we</p> <p>12 found no code that actually does that, would -- would</p> <p>13 the code be the best evidence or would your recollection</p> <p>14 be the best evidence?</p> <p>15 MR. FISHER: Objection. Vague. Assumes facts</p> <p>16 not in evidence. Lacks foundation. Incomplete</p> <p>17 hypothetical.</p> <p>18 THE WITNESS: I guess it's hypothetical. But</p> <p>19 I -- the code -- the code is what it is.</p> <p>20 Q. BY MR. CHATTERJEE: And -- and -- and is it</p> <p>21 possible that you might just because of the passage of</p> <p>22 time, you might be remembering incorrectly? And if</p> <p>23 there's nothing that supports it in the code, that the</p> <p>24 code would be the best evidence of whether that</p> <p>25 functionality actually existed or not?</p> <p style="text-align: right;">Page 47</p>
<p>1 missing in order for us to determine the process by</p> <p>2 which Power accessed or provide Power user with means to</p> <p>3 access the Facebook web site?</p> <p>4 A. No.</p> <p>5 Q. Okay. As to the actions taken with respect to</p> <p>6 the source code, the very last sentence of interrogatory</p> <p>7 number 7 says "The person responsible for Power's</p> <p>8 conduct in this regard was its Chief Executive Officer,</p> <p>9 Steve Vachani."</p> <p>10 Do you see that?</p> <p>11 A. Where?</p> <p>12 Q. It's the very last sentence in response to</p> <p>13 interrogatory number 7.</p> <p>14 A. Correct. Yes.</p> <p>15 Q. And so with respect to the way that the --</p> <p>16 the -- the Power Ventures source code worked and the</p> <p>17 exact functions and technical mechanisms, those --</p> <p>18 you're responsible for -- for all of that, correct?</p> <p>19 A. I'm responsible as the CEO of the company.</p> <p>20 Q. And -- and -- and -- and even though you</p> <p>21 didn't write the code, you are personally responsible</p> <p>22 for however that code operated?</p> <p>23 MR. FISHER: Objection. Vague.</p> <p>24 THE WITNESS: What do you mean by "personally</p> <p>25 responsible"?</p> <p style="text-align: right;">Page 46</p>	<p>1 MR. FISHER: Objection. Vague. Assumes facts</p> <p>2 not in evidence.</p> <p>3 THE WITNESS: I --</p> <p>4 MR. FISHER: Lacks foundation. Incomplete</p> <p>5 hypothetical.</p> <p>6 THE WITNESS: The -- the code is as we've</p> <p>7 stated the best reference point. But naturally some --</p> <p>8 if clarification is needed, sometimes the managers or</p> <p>9 CEO, or other executives can provide better</p> <p>10 clarification on something. And I think that they -- as</p> <p>11 I've stated earlier today, code is obviously the best --</p> <p>12 best source to ask. But usually -- you know, you have</p> <p>13 to look at each specific case. And -- and that's where</p> <p>14 you've had opportunities. And I think over the last</p> <p>15 three years on -- on many, many numerous occasions the</p> <p>16 code, actions, and everything have been discussed at</p> <p>17 length and in detail. But the code is obviously, you</p> <p>18 know, as we've stated, the best source to -- you know,</p> <p>19 as a primary source.</p> <p>20 Q. BY MR. CHATTERJEE: Do you agree with me that</p> <p>21 the -- the PowerScript source code was used to run the</p> <p>22 Power 100 campaign from the power.com web site?</p> <p>23 MR. FISHER: Objection. Vague. Assumes facts</p> <p>24 not in evidence.</p> <p>25 THE WITNESS: PowerScript source code?</p> <p style="text-align: right;">Page 48</p>

<p>1 Q. BY MR. CHATTERJEE: Correct.</p> <p>2 A. I mean, in what -- what aspect of the</p> <p>3 campaign?</p> <p>4 Q. The -- the -- the form that users filled out</p> <p>5 as well as the -- the code was used in order to access</p> <p>6 the Facebook web site and then create the event</p> <p>7 invitations.</p> <p>8 MR. FISHER: Objection. Vague. Assumes facts</p> <p>9 not in evidence. Lacks foundation.</p> <p>10 THE WITNESS: A script was -- was created that</p> <p>11 was -- a script that was -- you know, whether we --</p> <p>12 let's say whether PowerScript or script. A script that</p> <p>13 was when users authorize -- users authorize the creation</p> <p>14 of an event and -- and the script was created to -- to</p> <p>15 -- to complete that -- that activity.</p> <p>16 Q. BY MR. CHATTERJEE: Who created that script?</p> <p>17 A. That script was created by Power.</p> <p>18 Q. Okay. And I used the term source code. Was</p> <p>19 what was confusing you was because it's what you would</p> <p>20 refer to as a script rather than as a source code?</p> <p>21 A. Maybe the terminology is different. You know,</p> <p>22 source code, you know, there's different levels of</p> <p>23 programming. And script programming ultimately if</p> <p>24 that's -- you know, any script that was completed on the</p> <p>25 Facebook site was naturally created by Power. Whether,</p> <p style="text-align: right;">Page 49</p>	<p>1 A. Sure.</p> <p>2 Q. To the extent you need assistance, we've</p> <p>3 executed some tools to give translations.</p> <p>4 A. Okay.</p> <p>5 Q. But to the extent they're inaccurate, you</p> <p>6 know, you could always evaluate. Is there any -- who is</p> <p>7 Bruno Carvalho?</p> <p>8 A. He was a marketing manager and marketing</p> <p>9 product manager.</p> <p>10 Q. Okay. Is he still affiliated with Power in</p> <p>11 any way?</p> <p>12 A. He is not.</p> <p>13 Q. How long was he with Power?</p> <p>14 A. He was probably 2007, 2008, two thousand....</p> <p>15 Three years.</p> <p>16 Q. Okay. So he was with --</p> <p>17 A. Approximately.</p> <p>18 Q. With the company for about three years?</p> <p>19 A. I don't know the exact time.</p> <p>20 Q. The subject line says "dados da campanha"?</p> <p>21 A. Yes.</p> <p>22 Q. I might be pronouncing it incorrectly.</p> <p>23 A. Yeah.</p> <p>24 Q. What does that mean?</p> <p>25 A. Statistics of the campaign.</p> <p style="text-align: right;">Page 51</p>
<p>1 you know, that's -- that's much more --</p> <p>2 Q. So if I -- if I used the word code to describe</p> <p>3 scripts and source code, would we be on the same page if</p> <p>4 I --</p> <p>5 A. Yes.</p> <p>6 Q. -- if I use that term?</p> <p>7 A. That's okay.</p> <p>8 Q. You're comfortable with that?</p> <p>9 A. I'm comfortable with that.</p> <p>10 MR. CHATTERJEE: Let's mark this as Exhibit</p> <p>11 191.</p> <p>12 (Plaintiff's Exhibit No. 191 marked for</p> <p>13 identification.)</p> <p>14 Q. BY MR. CHATTERJEE: So, Mr. Vachani, what --</p> <p>15 what I've done -- and you'll see this from time to time</p> <p>16 today, which is going to be a little bit different from</p> <p>17 previous deposition exhibits we've used. In some</p> <p>18 instances we have obtained certified translations of</p> <p>19 documents.</p> <p>20 A. Okay.</p> <p>21 Q. And you'll see on the second page that there's</p> <p>22 a -- a certified translation of the document. There are</p> <p>23 other circumstances that due to the -- the pressure of</p> <p>24 time we haven't gotten certified translations, and I may</p> <p>25 ask you to translate specific things.</p> <p style="text-align: right;">Page 50</p>	<p>1 Q. And -- and do you know what campaign Mr.</p> <p>2 Carvalho is referring to there?</p> <p>3 A. I believe this was a -- to the best of my</p> <p>4 recollection, there was -- there was questions that were</p> <p>5 asked about the campaign. And it might have even been</p> <p>6 related to Facebook had asked some questions about how</p> <p>7 many users had accessed the site. And I have to see --</p> <p>8 I thought there was an e-mail that went with this. I</p> <p>9 don't see any content here.</p> <p>10 Q. We'll -- we'll -- we'll get to that in a</p> <p>11 minute.</p> <p>12 A. Yeah. That's why it would be better to see</p> <p>13 that so I could make sure. Because it's been a long</p> <p>14 time. This is from 2008.</p> <p>15 Q. Why don't I --</p> <p>16 A. If you -- if you have the statistics that</p> <p>17 would provide a reference.</p> <p>18 MR. CHATTERJEE: Let's make this Exhibit 192.</p> <p>19 THE WITNESS: The only reason I said there</p> <p>20 were two -- two different discussions around statistics</p> <p>21 at that time.</p> <p>22 (Plaintiff's Exhibit No. 192 marked for</p> <p>23 identification.)</p> <p>24 Q. BY MR. CHATTERJEE: Do you recognize the</p> <p>25 document I've given you as Exhibit 192?</p> <p style="text-align: right;">Page 52</p>

<p>1 A. I do.</p> <p>2 Q. Okay. Is that the Excel spreadsheet that's</p> <p>3 referred to in the attachments line of Exhibit 191?</p> <p>4 A. You're telling me -- I've seen this document.</p> <p>5 I believe this is it. Is this the attachment that --</p> <p>6 that was printed from it?</p> <p>7 Q. Yes.</p> <p>8 A. Okay. Then that's -- then that's correct.</p> <p>9 Q. And just so the record's clear, what do you --</p> <p>10 without -- putting my representation aside, what do you</p> <p>11 understand this document to be?</p> <p>12 A. Do you mind if I take a look at it?</p> <p>13 Q. Sure.</p> <p>14 A. It's been a long time. Do you mind if I go</p> <p>15 online and just see the e-mail that requested this</p> <p>16 e-mail at that date?</p> <p>17 Q. Sure. We can take a five-minute break.</p> <p>18 A. Yeah. I just want to make sure, because it's</p> <p>19 -- there was many different campaigns going on.</p> <p>20 Q. That's fine.</p> <p>21 A. And just want to be accurate.</p> <p>22 Q. Yeah. No. You're 30(b)(6). If you need to</p> <p>23 confirm something, we'll take a break so you can take a</p> <p>24 look. Let's go off the record.</p> <p>25 THE VIDEOGRAPHER: We are going off the</p> <p style="text-align: right;">Page 53</p>	<p>1 Facebook -- although previously I think we've</p> <p>2 established -- although these numbers you can refer to</p> <p>3 in that Facebook was a -- was a very, very, very, very</p> <p>4 small part of our overall user base and our overall</p> <p>5 activity. So this -- this -- this side here refers to</p> <p>6 the Power site. I'm happy to go into more details on</p> <p>7 there.</p> <p>8 Q. When you say it "refers to the Power site,"</p> <p>9 what do you mean?</p> <p>10 A. The power.com site. So these are people that</p> <p>11 logged -- logged -- logged in. And then on our Power</p> <p>12 site we were -- that's where we were doing a campaign</p> <p>13 where we were saying to our users on Power, hey, you --</p> <p>14 promoting this campaign. Most -- most of the promotion</p> <p>15 was on that site, on the Power site. And there were</p> <p>16 various ways to -- to promote them. One was they could</p> <p>17 play -- play a game where they could choose friends and</p> <p>18 it was an entertainment forum that was on the Power</p> <p>19 site. This had nothing to do with Facebook. There were</p> <p>20 scraps which also have nothing to do with the Power</p> <p>21 site. That's an Orkut feature called scraps. If you</p> <p>22 see, we always refer to scraps.</p> <p>23 THE REPORTER: I'm sorry. Slow down a little</p> <p>24 bit, please.</p> <p>25 THE WITNESS: Sorry. Scraps are a feature on</p> <p style="text-align: right;">Page 55</p>
<p>1 record. The time is 10:08 a.m.</p> <p>2 (Whereupon a break was taken from 10:08 to</p> <p>3 10:28.)</p> <p>4 THE VIDEOGRAPHER: We are back on the record.</p> <p>5 The time is 10:28 a.m.</p> <p>6 THE WITNESS: Great. Thank you, Neel, for</p> <p>7 letting me get a reference point on this. I went back</p> <p>8 to the e-mails at that time, also tried to understand</p> <p>9 what this was in reference to. So -- go ahead.</p> <p>10 Q. BY MR. CHATTERJEE: Let me -- let me ask the</p> <p>11 question first.</p> <p>12 A. Sure. Please.</p> <p>13 Q. Exhibit 192 is a spreadsheet of some sort --</p> <p>14 A. Yep.</p> <p>15 Q. -- that refers to "total de logins." Do you</p> <p>16 see that?</p> <p>17 A. Yes.</p> <p>18 Q. What is Exhibit 192?</p> <p>19 A. So 190 -- this is a campaign summary</p> <p>20 although -- and there are two e-mails that go with this,</p> <p>21 one that you have here and one other e-mail one that I</p> <p>22 found here that's referring to this. This is -- these</p> <p>23 are statistics relating to our overall invitations</p> <p>24 campaign that was going on at that time. Not relating</p> <p>25 to Facebook, but relating to the entire site, of which</p> <p style="text-align: right;">Page 54</p>	<p>1 Orkut. So this is just referring to the global campaign</p> <p>2 as a whole.</p> <p>3 Q. BY MR. CHATTERJEE: Okay. And when you say</p> <p>4 "the global campaign," do you mean the hundred by</p> <p>5 hundred by hundred campaign?</p> <p>6 A. Our global invitation campaign and -- as a</p> <p>7 whole. Which the hundred by hundred was a incentive</p> <p>8 promotion to help further encourage users to -- you</p> <p>9 know, to bring friends to Power.</p> <p>10 Q. So -- so when they're -- this is a spreadsheet</p> <p>11 that basically tracks from December 2, 2008, to December</p> <p>12 11 --</p> <p>13 A. Yes.</p> <p>14 Q. -- 2008, the -- the campaign that Power</p> <p>15 Ventures had to try to get users to join the web site?</p> <p>16 A. This was a test campaign that we did test --</p> <p>17 testing the -- this promotion was a hundred by hundred.</p> <p>18 And this is in relation to the hundred by hundred, which</p> <p>19 was the promotion tool being used to -- to push the --</p> <p>20 this campaign that was.</p> <p>21 Q. Okay. And were there -- was there any other</p> <p>22 -- was there any other campaign that -- that this</p> <p>23 spreadsheet was covering other than the hundred by</p> <p>24 hundred by hundred?</p> <p>25 A. From what I can see, I believe this is</p> <p style="text-align: right;">Page 56</p>

<p>1 relating to the hundred by hundred. That was -- since 2 everything -- every invitation as a matter in whatever 3 way was being tracked, you know, as how many -- how many 4 new friends joined the site. The hundred by hundred was 5 kind of over encompassed the invitations during that 6 period. So they're inter -- they're all interrelated. 7 Since any -- any invitation sent in any form, whether a 8 user sent out an e-mail -- a lot of users took, like, 9 when you provide a link to the user and the user goes 10 and they send out e-mails, and they -- they created 11 e-mails which they sent to their own friends. Others 12 played -- played a game that we had that -- on this -- 13 on our site where they could choose friends inside the 14 game and say I want to invite this friend. So there 15 were many different ways on -- on the Power the site.</p> <p>16 Q. And the choose friends feature, that would be 17 taking the friends data, exporting it from a particular 18 social network to Power, and then there would be a 19 friends list?</p> <p>20 A. No. Typically on -- users have a -- a total 21 friends list which includes their friends from Orkut, 22 their friends from any social network. So they have an 23 aggregated friends list.</p> <p>24 Q. Right.</p> <p>25 A. And they also have their e-mail address book</p> <p style="text-align: right;">Page 57</p>	<p>1 these -- on these, because they're not -- they may not 2 be fully accurate. But the other ones, you know, just 3 kind of to give a general trend of seeing them -- our 4 invitation campaign.</p> <p>5 Q. Now, you refer to a database that existed in 6 order to build these statistics in this spreadsheet.</p> <p>7 A. Correct.</p> <p>8 Q. Do you recall saying that?</p> <p>9 A. That -- that -- I was -- I don't know. I'm 10 assuming that this was -- it would go to a database to 11 get this data, correct.</p> <p>12 Q. So there -- there -- there was some sort of 13 database that -- that Power Ventures maintained -- 14 A. Correct.</p> <p>15 Q. -- that would track this information?</p> <p>16 A. That would track total -- I believe it was the 17 Google Analytics. The Google Analytics is where he's 18 referring to -- first of all, the Google Analytics is 19 how many -- showed us how many log-ins and everything. 20 And the Google Analytics usually accessed the database 21 to provide the total log-ins.</p> <p>22 Q. And what about the conversion? There's this 23 "conversao."</p> <p>24 A. Okay. So first of all, this is how many 25 people participated in some kind of invitation from the</p> <p style="text-align: right;">Page 59</p>
<p>1 which they can see friends and choose friends from their 2 e-mail address -- address book. These are the typical 3 ways to access friends lists.</p> <p>4 Q. Okay. Now, do you know how the statistics 5 on -- on this spreadsheet Exhibit 192 were obtained?</p> <p>6 A. These were obtained from -- most -- I don't 7 know -- let me -- let me think about that question a 8 second. Usual -- from -- from best of my recollection 9 when a request was made this -- this was -- was obtained 10 from our data -- from our database. We would basically 11 look in the database and see -- or Google Analytics. 12 Basically what I'm looking at here is an e-mail on 13 December 16th from Bruno. It says we -- he's 14 referring -- he's referring to the hundred by hundred 15 campaign. And he's referring to a spreadsheet that's 16 similar to -- basically this has the same -- same 17 numbers. That's how I was able to get a reference 18 point. Because this e-mail --</p> <p>19 Q. And what does Mr. Carvalho say in that e-mail?</p> <p>20 A. So he's saying we're seeing an increase in the 21 results on the hundred by hundred campaign and here -- 22 here are some new actions to optimize this campaign. 23 Here below is an attachment until yesterday with 24 analytics -- and he's saying the analytics from 12-5 to 25 12-9 are problematic, so let's ignore those dates on</p> <p style="text-align: right;">Page 58</p>	<p>1 total -- total log-ins in the site. So out of 63,000 2 people that logged in, 1.53 percent participated in some 3 kind of invitation. Some kind of invitation on the 4 Power site.</p> <p>5 Q. Okay. So if you go down there's a section -- 6 A. Just to take this one step. So previously I 7 think we've -- there -- there have been some numbers, 8 for example, specific to -- to Facebook where it might 9 have had 6,000 or 5,000. This conversion is not 10 relating to Facebook. It's relating to the total 11 log-ins.</p> <p>12 Q. Right. We'll -- we'll get there.</p> <p>13 A. Okay.</p> <p>14 Q. Actually, let me just ask the question. Is 15 there -- was there a way to know to the best of your 16 recollection which of the invitations that were sent 17 were to Facebook as opposed to some other social 18 network?</p> <p>19 A. Nothing was sent -- what do you -- you're 20 saying sent on -- so first of all, as you --</p> <p>21 Q. Let me give you an example.</p> <p>22 A. Okay. Please.</p> <p>23 Q. If you look at -- so I have a certified 24 translation.</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 60</p>

<p>1 Q. I'll do the English version.</p> <p>2 A. Sure.</p> <p>3 Q. As long as -- are you comfortable that the</p> <p>4 translation on the total log-ins page is an accurate</p> <p>5 translation of --</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So there's a -- a -- a section that</p> <p>8 says "Amount of users who sent invitations." Do you see</p> <p>9 that?</p> <p>10 A. Yes.</p> <p>11 Q. And it lists each day a number of users who</p> <p>12 sent invitations on any given day. Do you see that?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. Is there a way to know whether those</p> <p>15 users who sent invitations sent them through Facebook or</p> <p>16 some other social network?</p> <p>17 A. So the answer is there are -- there are</p> <p>18 certain log -- hold on a sec. Let me -- let me clarify</p> <p>19 this so I can make sure I answer this correctly. What</p> <p>20 they talk about here is the type of invitations that</p> <p>21 were sent also. And I believe there's this -- in order</p> <p>22 to fully answer this, you have to look at this other</p> <p>23 file which I can -- I'm happy to show you here. Which</p> <p>24 is the same spreadsheet, but it's got -- it's called</p> <p>25 statistics of the hundred by hundred by hundred</p> <p style="text-align: right;">Page 61</p>	<p>1 didn't have a script working at that time. We had --</p> <p>2 able to create events and we had the ability to post</p> <p>3 status updates, but we did not have the functionality to</p> <p>4 send messages at that time.</p> <p>5 So the answer is all messages sent as far as</p> <p>6 direct e-mails were not sent -- there was not a single</p> <p>7 direct e-mail sent through Facebook, because we didn't</p> <p>8 even have that functionality available at that time. We</p> <p>9 were trying -- we were actually working on an e-mail</p> <p>10 server to launch later on where we could have a more</p> <p>11 traditional e-mail invitation campaign.</p> <p>12 Q. So let's -- let's -- let's break that down a</p> <p>13 little bit.</p> <p>14 A. Please.</p> <p>15 Q. One of the things you mentioned was the</p> <p>16 functionality to be able to create an event on Facebook.</p> <p>17 A. Correct.</p> <p>18 Q. Was that tracked in any way on these</p> <p>19 spreadsheets or otherwise by Power Ventures?</p> <p>20 A. As far as my best of my recollection, it</p> <p>21 wasn't. And I haven't seen -- I don't -- I don't -- I</p> <p>22 think that we had an e-mail exchange where we -- do</p> <p>23 you -- do you have that e-mail? I sent it a long time.</p> <p>24 Q. Yeah, I'm just -- I'm just asking to the best</p> <p>25 --</p> <p style="text-align: right;">Page 63</p>
<p>1 campaign. It was sent on -- do you have that by any</p> <p>2 chance? It says called (not English) hundred by hundred</p> <p>3 (not English). It says --</p> <p>4 Q. BY MR. CHATTERJEE: What does that mean?</p> <p>5 A. It's a -- the campaign hundred by hundred</p> <p>6 starting to give results. And this was sent two days --</p> <p>7 Q. I think you said December 16th.</p> <p>8 A. December 16th, yeah. And this was on December</p> <p>9 14th. And it had the same file called statistics, but</p> <p>10 it was presented in a different format. And had</p> <p>11 slightly more detail. That's the one I'm looking at</p> <p>12 right here.</p> <p>13 Q. It did it break it down on a per social</p> <p>14 network?</p> <p>15 A. What it -- what it actually breaks it down is</p> <p>16 the type of invitation sent. So it says they were</p> <p>17 scraps. Scraps were sent -- scraps are only on Orkut.</p> <p>18 So they would be empty on -- for Facebook. And then the</p> <p>19 game, it says the game here, and then e-mails. E-mails</p> <p>20 were sent by users. So those -- since we didn't have a</p> <p>21 e-mail server working at that time, these were users</p> <p>22 that went out and sent e-mails, took the link and sent</p> <p>23 e-mails. And so therefore -- but the simple answer is</p> <p>24 as far as I understand there was never a single message</p> <p>25 sent on Facebook because we didn't have e-mails and we</p> <p style="text-align: right;">Page 62</p>	<p>1 A. Yeah, I don't -- I don't believe it -- it was</p> <p>2 tracked. But I -- but I -- I believe that we -- there</p> <p>3 was an e-mail on December 27th where it was actually an</p> <p>4 exhibit. I don't know if we have that. I would just --</p> <p>5 if we have that handy by any chance?</p> <p>6 Q. I -- I -- I don't. But I just -- I'm just</p> <p>7 trying to get a sense of --</p> <p>8 A. Yeah.</p> <p>9 Q. -- there was some information you were</p> <p>10 tracking. Was there any particular reason that -- that</p> <p>11 Power was not tracking event invitations that were or</p> <p>12 notifications that were sent?</p> <p>13 A. Event creations, I -- I -- I don't -- I don't</p> <p>14 know the answer. I think that we -- that there was a</p> <p>15 question. That's why I'd like to see since it was a</p> <p>16 long time ago the -- this -- this conversation we've had</p> <p>17 before. And, in fact, upon having it even at that --</p> <p>18 we've -- we've provided answers. So if it would be good</p> <p>19 to reference those, because I think this subject has</p> <p>20 been discussed.</p> <p>21 Q. But whatever the answer was in that -- in that</p> <p>22 e-mail correspondence is --</p> <p>23 A. Correct.</p> <p>24 Q. -- Power Ventures' position?</p> <p>25 A. That's correct.</p> <p style="text-align: right;">Page 64</p>

<p>1 Q. Okay. And the only reason I ask that question</p> <p>2 is --</p> <p>3 A. Yeah.</p> <p>4 Q. -- whatever that answer is --</p> <p>5 A. Yeah.</p> <p>6 Q. -- it is.</p> <p>7 A. It is.</p> <p>8 Q. You're standing by it, you're not going to</p> <p>9 change it?</p> <p>10 A. Yeah. I just need to -- the reason I would</p> <p>11 like to see it is at that time I -- I remember that</p> <p>12 there were some things that were not clear. And I would</p> <p>13 just -- it would be helpful if we have -- I could even</p> <p>14 take a minute and just look for that e-mail just to --</p> <p>15 Q. Go ahead.</p> <p>16 A. Just to be a hundred -- just because we're</p> <p>17 trying to get everything, make sure there's no</p> <p>18 misunderstandings today.</p> <p>19 Q. I just want to make sure one thing's really</p> <p>20 clear. So Exhibit 192 --</p> <p>21 A. Yeah.</p> <p>22 Q. -- those statistics that are on Exhibit 192,</p> <p>23 none of that activity was on Facebook?</p> <p>24 A. No. It's not saying -- this -- this is</p> <p>25 global. So if -- if a Facebook -- if a -- see,</p> <p style="text-align: right;">Page 65</p>	<p>1 A. So that --</p> <p>2 Q. But my question, Mr. Vachani, is this -- this</p> <p>3 spreadsheet is...</p> <p>4 A. Oops. Sorry.</p> <p>5 Q. ...is that the activity that's identified on</p> <p>6 Exhibit 192?</p> <p>7 A. Yes.</p> <p>8 Q. Was any of the activity that's listed here</p> <p>9 activity that would have occurred by using the Facebook</p> <p>10 system?</p> <p>11 A. So....</p> <p>12 Q. What I understood your --</p> <p>13 A. Yeah.</p> <p>14 Q. -- previous testimony to say is that the</p> <p>15 answer to that's no.</p> <p>16 A. Let me -- let me clarify. Let me clarify. If</p> <p>17 a user -- say a Power user almost -- I don't know the</p> <p>18 exact, but I'd say over 99 percent of our users were</p> <p>19 Orkut users first who then add -- and then some -- some</p> <p>20 users out of the Facebook account later. So then the</p> <p>21 second thing is if they sent an e-mail, it was a link</p> <p>22 that they took and they sent an e-mail to friends to</p> <p>23 invite them. So it wouldn't have happen directly on the</p> <p>24 Facebook site. It might have been -- they might have</p> <p>25 got the link from their -- you know, while they were</p> <p style="text-align: right;">Page 67</p>
<p>1 remember, our -- our users logged into Power. And this</p> <p>2 is using our Power browser. So they were inside our</p> <p>3 Power browser. At that point they -- a very small</p> <p>4 percentage of our users had connections to Facebook as</p> <p>5 one of the sites that was connected to Facebook. So if</p> <p>6 to say that --</p> <p>7 Q. No. No. Hold on. Listen --</p> <p>8 A. Some of these users would be face -- would</p> <p>9 be -- also have accounts on Facebook.</p> <p>10 Q. Right. But listen to my question really</p> <p>11 carefully.</p> <p>12 A. Correct.</p> <p>13 Q. I think you already said that you didn't have</p> <p>14 the functionality -- Power Ventures did not have the</p> <p>15 functionality to send e-mail invitations directly to</p> <p>16 Facebook users.</p> <p>17 A. Yeah. The first reason is that Facebook</p> <p>18 doesn't make e-mails -- at that time the Facebook did</p> <p>19 not make the e-mails available of the user. So it was</p> <p>20 impossible to be able to send an e-mail --</p> <p>21 Q. So --</p> <p>22 A. -- to a user. So that was the first reason.</p> <p>23 Orkut, on the other hand, allowed you to export the list</p> <p>24 and then, say, invite friends.</p> <p>25 Q. All right.</p> <p style="text-align: right;">Page 66</p>	<p>1 browsing. They were inside Power. But where they got</p> <p>2 the link, it was given to them by Power. You know, so</p> <p>3 they might have been inside Facebook while they got it,</p> <p>4 but it was not a Facebook functionality.</p> <p>5 Q. Right. So if you look at the -- the</p> <p>6 spreadsheet --</p> <p>7 A. Yes.</p> <p>8 Q. -- it says "Amount of users who sent</p> <p>9 invitations."</p> <p>10 A. Correct.</p> <p>11 Q. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And -- and then the next one says "Total</p> <p>14 invitations sent (e-mail)."</p> <p>15 A. Correct.</p> <p>16 Q. It's your testimony that none of those</p> <p>17 invitations would have been things that were sent</p> <p>18 through the Facebook system or by using the Facebook</p> <p>19 system?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay.</p> <p>22 A. And the reason -- the reason I understand this</p> <p>23 and I could be -- is that from my best of my</p> <p>24 recollection, Facebook did not have e-mail addresses of</p> <p>25 the users available for us to access, so we could not</p> <p style="text-align: right;">Page 68</p>

<p>1 have sent e-mails. The only way the users could get the</p> <p>2 e-mails were from the Orkut list, which they could</p> <p>3 extract that list and then import and send users and</p> <p>4 also other sites.</p> <p>5 Q. Right. And so one of the functionalities that</p> <p>6 I have in mind is you have a Facebook page, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And on your Facebook page there's an ability</p> <p>9 for me to send a message. I can click on a button?</p> <p>10 A. Correct.</p> <p>11 Q. And it has an e-mail-like functionality?</p> <p>12 A. Correct.</p> <p>13 Q. You know what I'm talking about?</p> <p>14 A. Yes.</p> <p>15 Q. This -- this spreadsheet didn't track those</p> <p>16 types of messages?</p> <p>17 A. It did track messages sent. Sent messages.</p> <p>18 But I -- it's -- but I -- but I -- as I remember, to the</p> <p>19 best of my recollection, Facebook messages were not a</p> <p>20 feature yet that we -- we were looking into that, where</p> <p>21 to send messages. But I don't -- we did -- we did not</p> <p>22 get to that yet, because it was too -- it was something</p> <p>23 that when we launched we were not ready with that</p> <p>24 functionality. We were evaluating users being able to</p> <p>25 say I want to send a message through Facebook because</p> <p style="text-align: right;">Page 69</p>	<p>1 Q. -- did you -- did you track the numbers of</p> <p>2 status updates that were placed on Facebook or event</p> <p>3 notifications that were placed on Facebook?</p> <p>4 A. The -- the -- whatever -- if it was -- if it</p> <p>5 was in the -- I believe it -- if it was tracked, we</p> <p>6 would have -- we would have had it. So I don't see any</p> <p>7 e-mails referring to it and I don't see any -- any</p> <p>8 statistics. If we had an e-mail in the past that we</p> <p>9 provided, then -- because it's obviously been three</p> <p>10 years of questions. I don't know specifically. But to</p> <p>11 the best of my knowledge, I don't -- I don't believe we</p> <p>12 tracked status updates. But I remember there was a</p> <p>13 discussion on event creation and I don't -- I don't know</p> <p>14 if you have that dialogue handy?</p> <p>15 Q. Yeah, I know what you're talking about.</p> <p>16 A. Yeah.</p> <p>17 Q. Let me --</p> <p>18 A. Yeah. It would just probably be better just</p> <p>19 to refer to that so I can refresh my memory.</p> <p>20 Q. I'm trying to just really narrow down the</p> <p>21 issues here.</p> <p>22 A. Sure.</p> <p>23 Q. Do you have any knowledge as you sit here</p> <p>24 today how many Facebook users received status updates</p> <p>25 that discussed the hundred by hundred by hundred</p> <p style="text-align: right;">Page 71</p>
<p>1 e-mails were not available. But to the best of my</p> <p>2 recollection, the reason there's no statistics on that.</p> <p>3 In fact, if you look in our database in the logs that I</p> <p>4 wrote -- you guys referred to, there's even a field</p> <p>5 where it talks about messages sent on Facebook, and it's</p> <p>6 empty. It's empty because no messages were sent. In</p> <p>7 Monte's e-mail he had actually requested trying to</p> <p>8 understand why it was empty and he -- he didn't -- he</p> <p>9 was trying -- he didn't -- he wasn't sure what to imply.</p> <p>10 I did look up on it. It was empty because we had never</p> <p>11 used that functionality.</p> <p>12 Q. And that's the private messaging feature?</p> <p>13 A. The private message. It's called -- I think</p> <p>14 it's called Facebook private message or something like</p> <p>15 that. And in the log it's empty because we had never --</p> <p>16 we had never used that functionality. And scraps are</p> <p>17 the same thing. Facebook -- scraps are wall messages.</p> <p>18 Q. Right.</p> <p>19 A. I believe that we never also got around --</p> <p>20 according to our -- at least the best of our what we can</p> <p>21 review, that we didn't -- I don't think that we sent --</p> <p>22 put messages on walls either. The only two that we</p> <p>23 worked with were status updates and event creation.</p> <p>24 Q. And --</p> <p>25 A. On Facebook.</p> <p style="text-align: right;">Page 70</p>	<p>1 promotion?</p> <p>2 A. I don't right -- I don't have that information</p> <p>3 right now.</p> <p>4 Q. Okay. If that information did exist at Power,</p> <p>5 where would it exist?</p> <p>6 A. Where would it have existed? I'd have -- I'd</p> <p>7 need to get clarification on that. I can -- on that</p> <p>8 specific question I -- I could -- I could inquire and --</p> <p>9 and ask if we haven't already covered that in the past.</p> <p>10 Q. Who -- who would you need to ask?</p> <p>11 A. I would actually try to go back to Leandro who</p> <p>12 was -- it would be a favor. He hasn't worked for the</p> <p>13 company for a long time. But he was one of the last</p> <p>14 people. I would try to --</p> <p>15 Q. Would that --</p> <p>16 A. -- see if -- see if that -- to find out how</p> <p>17 that would have been tracked. If -- but I believe we've</p> <p>18 actually discussed this in the past though.</p> <p>19 Q. Right. If that was tracked, would there be --</p> <p>20 would it be reflected in the code?</p> <p>21 A. It would -- there's two things. There's the</p> <p>22 ability to track it and whether it was actually being</p> <p>23 tracked. So the code -- for example, on the database</p> <p>24 there are tables that are referred to that we never</p> <p>25 actually -- you know, sometimes you have code to be able</p> <p style="text-align: right;">Page 72</p>

<p>1 to track it. But because of resources it's too -- too</p> <p>2 -- it requires too much server power or too many things,</p> <p>3 certain things are not turned on. And that's -- that's</p> <p>4 happened in many -- in many cases.</p> <p>5 For example, as we've referred to on</p> <p>6 November -- you know, on November 23rd we had changed</p> <p>7 servers of 2008. We had changed server companies that</p> <p>8 week. And afterwards we had disabled a lot of</p> <p>9 functionality that we had previously had that was too --</p> <p>10 too taxing. So there might have been code that said</p> <p>11 this could exist. And this actually came up in some of</p> <p>12 the conversations of Monte was trying to understand</p> <p>13 why -- why on November 23rd after that there was no --</p> <p>14 some -- some functionality. This is well before we even</p> <p>15 turned on Facebook. We had -- we had changed servers</p> <p>16 the week before we launched. A lot of -- we were --</p> <p>17 launched Facebook and many other things just because of</p> <p>18 cost -- cost -- cost restrictions.</p> <p>19 Q. Right. So to the extent that the information</p> <p>20 existed --</p> <p>21 A. Yeah.</p> <p>22 Q. -- and was actually tracked, it would be</p> <p>23 reflected in -- in the code. There would be code</p> <p>24 functionality that would enable it and then there would</p> <p>25 actually be data in the database that was actually</p> <p style="text-align: right;">Page 73</p>	<p>1 during a -- because we were doing an internet transfer</p> <p>2 of data.</p> <p>3 Q. And that -- that -- that 180 gig file, would</p> <p>4 that have data associated with log-ins to Facebook?</p> <p>5 A. No. That -- that would have -- that wouldn't</p> <p>6 be storing log-ins to Facebook. This was -- this was a</p> <p>7 more general just like the page -- the pages visited.</p> <p>8 So that's why it was so large. It's like a -- so --</p> <p>9 Q. When you say "pages visited," what do you</p> <p>10 mean?</p> <p>11 A. Our links. So, like, if there's a -- you</p> <p>12 know, a link on -- anything on -- as a user went</p> <p>13 throughout Power it tracked, I believe. It was a --</p> <p>14 a -- a general thing of just their -- their -- their</p> <p>15 click -- click flow I believe. I don't know for sure,</p> <p>16 but I believe it was links clicked on.</p> <p>17 Q. So with that, the Power browser -- I'll refer</p> <p>18 to the Power browser. You know what I mean when I refer</p> <p>19 to that.</p> <p>20 A. Yeah.</p> <p>21 Q. It would have a number of different boxes</p> <p>22 or -- I'll refer to them as boxes for the different</p> <p>23 social networks it connected to?</p> <p>24 A. Correct.</p> <p>25 Q. Do you know what I'm referring to?</p> <p style="text-align: right;">Page 75</p>
<p>1 tracked, right?</p> <p>2 A. There would be data in the data -- that's</p> <p>3 correct.</p> <p>4 Q. Okay. And we've referred generally to the</p> <p>5 database.</p> <p>6 A. Yes.</p> <p>7 Q. Can you tell me what that was called or what</p> <p>8 the file name of it was?</p> <p>9 A. I -- the file names you guys have -- have</p> <p>10 reviewed everything that was there. So you -- you guys</p> <p>11 have probably -- your guys probably have better</p> <p>12 knowledge of that than I do personally. I mean, because</p> <p>13 you guys -- probably the most -- recently analyzed it</p> <p>14 the most.</p> <p>15 Q. Do you know if that database exists today?</p> <p>16 A. Everything -- everything that was -- we</p> <p>17 provided everything that exists today to you guys. And</p> <p>18 as far as I understand, everything -- and again was --</p> <p>19 everything -- you guys were able to find all files</p> <p>20 except for a specific file that we -- we have that we've</p> <p>21 discussed that was a -- a -- a log-in file of -- of</p> <p>22 links of, like, pages visited, which I think that was</p> <p>23 the -- that was the file that was 180 gigs that was</p> <p>24 available for three years. But on two -- in -- on</p> <p>25 August 2011 was not able -- it was too large to transfer</p> <p style="text-align: right;">Page 74</p>	<p>1 A. Yeah.</p> <p>2 Q. And if I were to click on the box that said</p> <p>3 Facebook when that functionality existed --</p> <p>4 A. Yeah.</p> <p>5 Q. -- would that be the type of link that would</p> <p>6 then be registered in this 180 gig file?</p> <p>7 A. I don't -- I don't know the answer to that.</p> <p>8 Because what I understand, it was just the general --</p> <p>9 like there was -- there's -- there's an e-mail where I</p> <p>10 specifically asked Eric -- I think it was -- no, not</p> <p>11 Eric -- Leandro about -- about what this -- this file</p> <p>12 was before -- when -- when we were having to deal with</p> <p>13 transferring it. And I said this is -- we're not going</p> <p>14 to have the capability to transfer this file. What's</p> <p>15 this in this file. And he said -- and the two things</p> <p>16 that he referred that it has nothing to do with the</p> <p>17 operations of the site and it -- it's just a -- it's</p> <p>18 just a tracking links clicked on. So links clicked on,</p> <p>19 you know, I -- I'm not sure. It's --</p> <p>20 Q. You don't know exactly what that means?</p> <p>21 A. I don't know what that -- what that exactly</p> <p>22 means.</p> <p>23 Q. Okay.</p> <p>24 A. But what I do know is that that's not --</p> <p>25 that's not a database file. That's -- that's not --</p> <p style="text-align: right;">Page 76</p>

<p>1 that's not a database file. It's a log file. So it has</p> <p>2 -- when we refer to the database and things we access in</p> <p>3 the database, that wouldn't -- that file is not a</p> <p>4 database file.</p> <p>5 Q. And so the -- the -- the -- the database file,</p> <p>6 that has been preserved?</p> <p>7 A. Well, that -- it's been preserved and</p> <p>8 statistics have been provided as far as registered users</p> <p>9 on Facebook. We've provided pretty extensive statistics</p> <p>10 on how many users registered to Facebook and -- and</p> <p>11 things like in the past. And you guys have those on</p> <p>12 file.</p> <p>13 Q. And -- and to the extent that there's evidence</p> <p>14 of event notifications being sent through Facebook, it</p> <p>15 would be in that database file?</p> <p>16 A. Well, the database file would track how many</p> <p>17 users registered to Facebook and I believe also if --</p> <p>18 because that -- how many users activated a Facebook -- a</p> <p>19 Power face -- an account on Facebook through Power.</p> <p>20 That's -- that's what it would track. And I -- the</p> <p>21 other thing regarding to event, I think it's best to</p> <p>22 refer to the previous conversations, because I think</p> <p>23 that was addressed in the past.</p> <p>24 Q. Okay. And whatever those statements were,</p> <p>25 that's the testimony of Power Ventures?</p> <p style="text-align: right;">Page 77</p>	<p>1 -- he's not available. So I haven't talked to him.</p> <p>2 He's not -- we have no intention right now to try to,</p> <p>3 you know, locate him to be in at trial.</p> <p>4 MR. CHATTERJEE: What number are we on, 193?</p> <p>5 THE REPORTER: 193.</p> <p>6 (Plaintiff's Exhibit No. 193 marked for</p> <p>7 identification.)</p> <p>8 Q. BY MR. CHATTERJEE: Unlike some of the other</p> <p>9 ones, we have a certified translation.</p> <p>10 A. Yeah, this is the e-mail I was just referring</p> <p>11 to.</p> <p>12 Q. Okay. So let me just ask you so the record's</p> <p>13 clear. Document number 193, what is this?</p> <p>14 A. So this -- on April 24th, 2011, as you know,</p> <p>15 that was -- that was the month when we were -- we had</p> <p>16 made the decision to remove Power.com, you know, off --</p> <p>17 take it offline. And at that -- you know, it was a</p> <p>18 cost-cutting measure. And we also had -- were not in a</p> <p>19 position to make payments on our servers and we were --</p> <p>20 we didn't know how many days -- it was already past the</p> <p>21 date to be removed so -- to be shut off. And so we had</p> <p>22 went to a -- we were going through a process of trying</p> <p>23 -- of backing up everything on another server. And the</p> <p>24 way -- the only way to back it up was had to be</p> <p>25 transferred so -- through the internet. So it was a</p> <p style="text-align: right;">Page 79</p>
<p>1 A. I'd have -- I'd like to look at those, but I</p> <p>2 believe that was the testimony that we've -- we've made</p> <p>3 in the past, that's correct.</p> <p>4 Q. All right. Does Power -- other than you, do</p> <p>5 you know if -- if Power Ventures intends to offer any</p> <p>6 other witness for trial?</p> <p>7 A. Other witness for.... Are you talking about</p> <p>8 in the future?</p> <p>9 Q. Yes.</p> <p>10 MR. FISHER: I'm going to instruct you not to</p> <p>11 answer on the grounds that goes into attorney work</p> <p>12 product and attorney-client conversation.</p> <p>13 THE WITNESS: So I can't answer that at this</p> <p>14 point.</p> <p>15 Q. BY MR. CHATTERJEE: Is Eric Santos going to</p> <p>16 testify at trial?</p> <p>17 A. To the best of my knowledge --</p> <p>18 MR. CHATTERJEE: I'll ask you, Tim.</p> <p>19 MR. FISHER: I don't believe so.</p> <p>20 MR. CHATTERJEE: Okay. It's important because</p> <p>21 we've served a notice. You guys have said he's not, and</p> <p>22 we need to know that. Because if he's not testifying at</p> <p>23 trial, that's material. We can talk about that offline.</p> <p>24 MR. FISHER: Yeah, let's do that.</p> <p>25 THE WITNESS: As far as I know, he's not even</p> <p style="text-align: right;">Page 78</p>	<p>1 very long, long process that would take weeks. And so</p> <p>2 this was the -- this was at the -- towards the end of</p> <p>3 that backup process.</p> <p>4 And I had sent an e-mail to Eric letting him</p> <p>5 know. You know, he wasn't involved in the backup. He</p> <p>6 wasn't working for the company. But I was informed that</p> <p>7 there were two files that were too large to transfer.</p> <p>8 They were just in the time that we had and it would have</p> <p>9 taken a week. And, you know, it just -- so I would then</p> <p>10 sent an e-mail to Eric -- he had told me what -- I had</p> <p>11 already asked them, but just as a second opinion to make</p> <p>12 sure, you know, that these were not any way needed or</p> <p>13 valuable to our future. I sent to Eric if -- I think I</p> <p>14 sent this e-mail to Eric. We are backing everything up</p> <p>15 at Power. We might lose PowerLogger and PowerFriends.</p> <p>16 Is this okay.</p> <p>17 And Eric responds, I believe -- I believe the</p> <p>18 site will function just fine -- fine without these two</p> <p>19 services. They were just plug-ins. They're not core to</p> <p>20 the site.</p> <p>21 Q. Were all the discussions about PowerLogger --</p> <p>22 or about Logger and PowerFriends, were they all done</p> <p>23 through e-mail or were they verbal --</p> <p>24 A. They were all e-mail.</p> <p>25 Q. Okay. I'm going to ask you a couple</p> <p style="text-align: right;">Page 80</p>

<p>1 foundational questions. Who is Andre Fernandes?</p> <p>2 A. Andre was the server -- he was the server</p> <p>3 manager. Like I -- previously was the server manager.</p> <p>4 At this time he was not working for the company. But I</p> <p>5 had basically paid him a little to try to help -- help</p> <p>6 me do this conversion. Previously he was the guy</p> <p>7 responsible for the all the server management and the --</p> <p>8 the head operations -- server operations.</p> <p>9 Q. For Power?</p> <p>10 A. For Power. And -- previously. But at this</p> <p>11 time he wasn't. I had just contacted him to help me</p> <p>12 with that backup since he was a guy that knew this best.</p> <p>13 Q. There's a reference in this e-mail to</p> <p>14 Ghostday. Do you see that?</p> <p>15 A. That's Leandro.</p> <p>16 Q. And what's Leandro's last name?</p> <p>17 A. I don't remember offhand, but I -- I can -- I</p> <p>18 can -- I don't remember offhand, but I can get it for</p> <p>19 you.</p> <p>20 Q. And was Leandro a Power --</p> <p>21 A. He was previously a programmer at Power also.</p> <p>22 So these are the two guys that helped me with that</p> <p>23 backup when I needed that backup in April as a -- I</p> <p>24 basically contacted them and they -- they -- they were</p> <p>25 working other jobs, but they were doing this in the --</p> <p style="text-align: right;">Page 81</p>	<p>1 -- it was inside of -- it was an Orkut app. So it had</p> <p>2 nothing to do -- it was completely unrelated. It was</p> <p>3 launched about a year earlier I think or six months.</p> <p>4 Q. But there was a functionality that Power</p> <p>5 Ventures had that worked not only on Orkut but was used</p> <p>6 to work on other web sites as well?</p> <p>7 A. Yeah. Well, worked on many sites. Orkut was</p> <p>8 our largest -- user base was on Orkut. So that's why we</p> <p>9 refer to -- a lot of our biggest innovations were on</p> <p>10 Orkut just because that's where our largest user base</p> <p>11 was.</p> <p>12 Q. Right. So here it says is the basis of the</p> <p>13 Orkut app PowerFriends.</p> <p>14 A. Correct.</p> <p>15 Q. Is it your testimony that that Orkut app was</p> <p>16 only used on Orkut?</p> <p>17 A. Yes. That -- that app was only used on Orkut</p> <p>18 and it was a much earlier time than even -- we're not</p> <p>19 even involved in Facebook. So the -- the PowerFriends</p> <p>20 app is completely irrelevant to any discussions</p> <p>21 whatsoever, you know, I think, relating to Facebook.</p> <p>22 It's a --</p> <p>23 Q. As of April 17th, 2011, the logger database</p> <p>24 existed?</p> <p>25 A. It existed on the -- yeah, on the server. It</p> <p style="text-align: right;">Page 83</p>
<p>1 in the evenings for me.</p> <p>2 Q. Okay. If you go to the -- the last page of</p> <p>3 the translated e-mail, there's an e-mail from Andre</p> <p>4 Fernandes to you where it says "Steve, Only two files</p> <p>5 have not yet been copied. The files are two databases:"</p> <p>6 A. Yeah.</p> <p>7 Q. "Logger and PowerFriends."</p> <p>8 A. Yeah.</p> <p>9 Q. Okay. So can you tell me what -- what did you</p> <p>10 understand the logger database to be?</p> <p>11 A. So as you can see in my e-mail, after he -- he</p> <p>12 said that I -- I asked -- I asked Leandro what -- what</p> <p>13 this is -- what -- what do these two files do, and</p> <p>14 Leandro responded the purpose of the PowerLogger is to</p> <p>15 log access to the web site and to specific links, for</p> <p>16 example, how many people clicked on a given link in the</p> <p>17 nav bar or any button you want to know about. And</p> <p>18 PowerFriends is the -- is completely unrelated</p> <p>19 application which was on Orkut.</p> <p>20 Q. And -- and describe what the PowerFriends app</p> <p>21 is.</p> <p>22 A. That was an app. So, as you know, Power was a</p> <p>23 company that was creating apps for social networks while</p> <p>24 -- while -- with our Power platform. And PowerFriends</p> <p>25 was an app that we created for -- for Orkut. So it had</p> <p style="text-align: right;">Page 82</p>	<p>1 was available and accessed in whatever -- if anything,</p> <p>2 it was referenced in any questions. If -- I don't know</p> <p>3 if that was specifically where -- but it was -- it was</p> <p>4 -- it existed until that date, that's correct.</p> <p>5 Q. Okay. And then following that you made the</p> <p>6 decision to delete that database?</p> <p>7 A. Yeah. As you can see, the dialogue there we</p> <p>8 didn't have the time with -- to transfer it before our</p> <p>9 servers would be shut off. So they -- the decision was</p> <p>10 transfer all the most valuable stuff and if we have time</p> <p>11 and they're not shut off, do these two last.</p> <p>12 Q. Other than what's stated in this e-mail, do</p> <p>13 you know specifically what was in the logger database?</p> <p>14 A. I do not know specifically. This was why I</p> <p>15 asked that question right there.</p> <p>16 Q. But other than what's stated here?</p> <p>17 A. I -- I do not know.</p> <p>18 Q. So as you sit here today, you don't know, for</p> <p>19 example, if the logger database would track event</p> <p>20 invitations sent through links to -- to Facebook users?</p> <p>21 MR. FISHER: Objection. Vague. Assumes facts</p> <p>22 be in evidence.</p> <p>23 THE WITNESS: What I do --</p> <p>24 MR. FISHER: Lacks foundation. Incomplete</p> <p>25 hypothetical.</p> <p style="text-align: right;">Page 84</p>

<p>1 THE WITNESS: What I do know is that questions</p> <p>2 relating to the events and these things were asked by</p> <p>3 Facebook and -- and truthfully answered to the best of</p> <p>4 our knowledge for the previous three years would have</p> <p>5 referenced and accessed whatever was available to us.</p> <p>6 So the date that this was deleted, any question -- mass</p> <p>7 amount of questions that were previously asked were</p> <p>8 already asked. And I don't know if it was referring to</p> <p>9 this or not, but they were -- we had access to -- to</p> <p>10 provide data to -- to requested questions in the</p> <p>11 previous -- in the previous three years.</p> <p>12 Q. BY MR. CHATTERJEE: Okay. So if I understand</p> <p>13 what you're saying correctly is if -- if that</p> <p>14 information had been in the logger database, you would</p> <p>15 have referred to it and provided that information</p> <p>16 already?</p> <p>17 A. Correct. But I don't know if we referred to</p> <p>18 it or not.</p> <p>19 Q. Okay.</p> <p>20 A. So this was only on April 17th, three years.</p> <p>21 And 2008 obviously is when we I think had the -- the</p> <p>22 lawsuit. You know, the first time that we interacted</p> <p>23 with Facebook.</p> <p>24 Q. And if we wanted to test the accuracy of</p> <p>25 whatever you investigated, we couldn't do that today</p> <p style="text-align: right;">Page 85</p>	<p>1 discussing the logger database with Leandro and Mr.</p> <p>2 Fernandes, did you ever discuss whether information</p> <p>3 related to event invitations or status updates on</p> <p>4 Facebook were included in PowerLogger?</p> <p>5 A. I -- I didn't ask that, those specific</p> <p>6 questions. As you can see, you know, the question -- I</p> <p>7 asked -- what I know is that we were -- were obviously</p> <p>8 -- the question right at that time was do we lose the</p> <p>9 entire -- we're backing up, this is our last chance to</p> <p>10 back up whatever exists, and these -- these were the</p> <p>11 lowest two priorities. So I -- only thing I -- that was</p> <p>12 the only thing I needed to know is make sure you</p> <p>13 transfer our core database users, etcetera, and these</p> <p>14 are the last -- in order of priority, these were the</p> <p>15 last two to transfer.</p> <p>16 Q. In making sure that you were transferring</p> <p>17 them, what were your primary concerns?</p> <p>18 A. My primary -- well, my primary concern was</p> <p>19 obviously that we have our core -- as our core -- in</p> <p>20 order of priority, our core user base, core IP and</p> <p>21 everything and core functionality that's essential for</p> <p>22 the site and operation to run, to make sure that those</p> <p>23 were transferred. And, you know, so that if we -- if</p> <p>24 and when we need to re -- turn this back on or -- or</p> <p>25 operate this site, we could -- we could do that in the</p> <p style="text-align: right;">Page 87</p>
<p>1 because whatever is in that logger database is no longer</p> <p>2 available to us, right?</p> <p>3 MR. FISHER: Objection. Vague.</p> <p>4 THE WITNESS: What we could -- what I could</p> <p>5 find out -- what we could find out is I -- I could find</p> <p>6 out more details on -- if -- I don't know if I could</p> <p>7 ask. I could try to inquire more details on -- on this</p> <p>8 logger -- logger database, but that -- that file is no</p> <p>9 longer available today.</p> <p>10 Q. BY MR. CHATTERJEE: Right.</p> <p>11 A. It was available until April 17th.</p> <p>12 Q. And when you say "inquire," you would have to</p> <p>13 ask Mr. Fernandes or -- and Eric Santos?</p> <p>14 A. I would basically -- yeah. I would go and try</p> <p>15 to -- to ask one of the original programmers to provide</p> <p>16 further details on that file.</p> <p>17 Q. Yeah. Or the code might say.</p> <p>18 A. Or the code -- the code might -- the code</p> <p>19 might say. I would probably go to them to get a</p> <p>20 clear -- clear answer to that.</p> <p>21 Q. Did you ever ask whether the logger -- at the</p> <p>22 time you were discussing all of this in November of 2011</p> <p>23 -- well, it looks like April of 2011. Scratch it. Let</p> <p>24 me start over.</p> <p>25 In the April 2011 time frame when you were</p> <p style="text-align: right;">Page 86</p>	<p>1 future. And then obviously these two files, you know,</p> <p>2 because they were anomalies and so large, the logical</p> <p>3 decision was finish -- finish transferring the core</p> <p>4 stuff, otherwise it makes everything else, you know,</p> <p>5 completely -- you're not -- you won't be able to even</p> <p>6 use the site in the future.</p> <p>7 Q. So is it fair to say, if I hear you right,</p> <p>8 that your primary focus was to make sure that -- that</p> <p>9 the Power technology could still be operable if you</p> <p>10 relaunched?</p> <p>11 A. Well, my primary functionality was to get --</p> <p>12 my primary purpose was to get everything backed up. You</p> <p>13 know, it was just like a -- it was to get the entire</p> <p>14 thing backed up. But as you can see, after -- the first</p> <p>15 time I was made aware of this was -- I mean, my -- my</p> <p>16 assumption up until April 17th was that everything,</p> <p>17 hundred percent, had been instructed to be backed up so</p> <p>18 it wasn't even anything for me to think about. It was</p> <p>19 being backed up.</p> <p>20 And that -- and on April 17th I was informed</p> <p>21 that everything had been backed up except these two --</p> <p>22 this is a decision I had made or any -- because I</p> <p>23 assumed everything would be backed up. I had made every</p> <p>24 effort, obviously, to do that. And on April 17th I was</p> <p>25 informed that these are the remaining two files. So it</p> <p style="text-align: right;">Page 88</p>

<p>1 was not even a decision about which is more important.</p> <p>2 I didn't -- I didn't choose that. This is the logical</p> <p>3 way that it happened when I -- you know, under an</p> <p>4 instruction to back everything up. On April 17th I was</p> <p>5 told that these two files exist and it was unlikely, you</p> <p>6 know -- and I said just -- and you can see I ask how</p> <p>7 long would it take to finish these two.</p> <p>8 Q. Right. But my -- my question's really simple,</p> <p>9 Mr. Vachani.</p> <p>10 A. Yeah.</p> <p>11 Q. Which is why was your objective to back it up?</p> <p>12 Why would you do that?</p> <p>13 A. Well, it's logical. I wanted to back</p> <p>14 everything that possibly existed. I didn't want to lose</p> <p>15 anything. I mean, there's no reason to lose any files.</p> <p>16 Q. And for what purpose?</p> <p>17 A. I mean, it's our core -- our company's core</p> <p>18 IP. Why would we -- you know, I mean, we have every</p> <p>19 obligation -- you know, we wanted to keep -- obviously,</p> <p>20 you know, if you're trying to ask that -- if you're</p> <p>21 trying to ask or trying to back it up for the Facebook</p> <p>22 case for every -- we were trying to back up everything</p> <p>23 for every purpose. And that was the -- that was the</p> <p>24 instruction, back everything up.</p> <p>25 And -- and for two weeks started that at the</p> <p style="text-align: right;">Page 89</p>	<p>1 you know, make it usable. So "Is this okay?" means is</p> <p>2 the site still going to be able to be usable.</p> <p>3 Because -- because we're probably going to lose these</p> <p>4 files. I don't think I have a choice. And so I was</p> <p>5 just trying to understand what -- what our damages would</p> <p>6 be.</p> <p>7 Q. It was an operational question --</p> <p>8 A. Yes.</p> <p>9 Q. -- will the system still work?</p> <p>10 A. Correct.</p> <p>11 Q. If we lose these two.</p> <p>12 A. Yeah. The benefit -- whether -- whatever the</p> <p>13 priority is completely irrelevant. As I said, my</p> <p>14 instruction was back everything up. And that up until</p> <p>15 April 17th it was my understanding that everything would</p> <p>16 be backed up. Naturally, you know, things happen</p> <p>17 beyond -- beyond my control.</p> <p>18 Q. Other than Mr. Santos, did you -- did you</p> <p>19 consult with anybody else about losing these two sets of</p> <p>20 files?</p> <p>21 A. Leandro and Andre, you saw my messages there.</p> <p>22 Those were the only three people that I consult -- that</p> <p>23 I -- that I consulted.</p> <p>24 MR. CHATTERJEE: Okay. Let's mark this as</p> <p>25 Exhibit 193? Or 4?</p> <p style="text-align: right;">Page 91</p>
<p>1 beginning of April -- it took several weeks. I don't</p> <p>2 know the exact amount of time. And on April 17th is</p> <p>3 when I was informed that the backup is almost complete.</p> <p>4 These are the two files that are missing. And I was --</p> <p>5 I was worried because I knew that the server would be</p> <p>6 shut off any day -- any day now -- now.</p> <p>7 Q. Right. So on April 17th, 2011, in this e-mail</p> <p>8 you say, "We are backing everything at power. We might</p> <p>9 lose power logger and power friends. Is this okay?" Do</p> <p>10 you see that?</p> <p>11 A. This is e-mail sent to Eric, who was not</p> <p>12 involved in the backup. He didn't even know that was</p> <p>13 going on.</p> <p>14 Q. Right.</p> <p>15 A. I just -- when I was told that -- when I was</p> <p>16 told that we might lose this I consulted -- I tried -- I</p> <p>17 contacted Eric and said, hey, Eric, just this is a real</p> <p>18 simple favor, can you just tell me these two files.</p> <p>19 Q. Yes. So my question is what did you mean "Is</p> <p>20 this okay?" Like, what were you getting at when you</p> <p>21 asked that question?</p> <p>22 A. Well, I just wanted to know as, you know, what</p> <p>23 -- as a technical -- Eric was a technical manager. His</p> <p>24 purpose -- his purpose is to tell me technically if this</p> <p>25 is -- if this is going to destroy the site or make it --</p> <p style="text-align: right;">Page 90</p>	<p>1 THE REPORTER: 4.</p> <p>2 MR. CHATTERJEE: 4.</p> <p>3 (Plaintiff's Exhibit No. 194 marked for</p> <p>4 identification.)</p> <p>5 Q. BY MR. CHATTERJEE: Mr. Vachani, just so it's</p> <p>6 clear, that December 16th e-mail that you referred to --</p> <p>7 A. Yes.</p> <p>8 Q. -- that had the spreadsheet, is it all right</p> <p>9 if we access your e-mail account pursuant to our</p> <p>10 agreement and just try and find that document?</p> <p>11 A. Yeah. I mean, I can also forward it to you.</p> <p>12 Q. Go -- go ahead and forward it.</p> <p>13 A. I'll just forward you a simplified. That way</p> <p>14 you don't have to go --</p> <p>15 Q. That way we can -- and we'll -- we'll -- we'll</p> <p>16 deal with that after the lunch break.</p> <p>17 A. That way I can.... Okay. So where should I</p> <p>18 send it to?</p> <p>19 MS. METANAT: M. M --</p> <p>20 THE WITNESS: Is that N or?</p> <p>21 MS. METANAT: M, as in Mary.</p> <p>22 THE WITNESS: M, as in Mary.</p> <p>23 MS. METANAT: M, as in Mary, e-t --</p> <p>24 THE WITNESS: So two Ms?</p> <p>25 MS. METANAT: Yes.</p> <p style="text-align: right;">Page 92</p>

<p>1 THE WITNESS: Okay.</p> <p>2 MS. METANAT: E-t-a-n-a-t@Orrick.com.</p> <p>3 THE WITNESS: So it's m-m-e-t-a-n-a-t?</p> <p>4 MS. METANAT: Correct.</p> <p>5 THE WITNESS: @Orrick.com? Okay. I just sent</p> <p>6 you that e-mail.</p> <p>7 MS. METANAT: Thank you.</p> <p>8 Q. BY MR. CHATTERJEE: The document that I've</p> <p>9 given you that's marked Exhibit 194.</p> <p>10 A. Oh, here it is. Okay.</p> <p>11 Q. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. This is a set of e-mail correspondence between</p> <p>14 you and Mr. Carvalho dated about November 23rd, 2010.</p> <p>15 A. Yeah.</p> <p>16 Q. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. I have a couple questions --</p> <p>19 A. Sure.</p> <p>20 Q. -- related to this. Mr. Carvalho at the</p> <p>21 bottom of the e-mail on the first page says "Steve,</p> <p>22 yesterday 25 people reached 100 friends ... I think</p> <p>23 until 13 march we have 30 ."</p> <p>24 A. Correct.</p> <p>25 Q. And it says "The system checks automatically</p> <p style="text-align: right;">Page 93</p>	<p>1 in result of this campaign -- because at that time</p> <p>2 Facebook -- you know, Facebook and Orkut crossover was</p> <p>3 really, really small. You know, that's changed as of</p> <p>4 today. But so this just refers to the total amount of</p> <p>5 people. And so I'm guessing that probably all 30 of</p> <p>6 these people were Orkut users that achieved this. Just</p> <p>7 that -- I -- I mean, in fact --</p> <p>8 Q. But that's a guess? You don't know?</p> <p>9 A. We can -- we can -- yeah, I mean, we can find</p> <p>10 out. But yeah, I mean, that's obviously --</p> <p>11 Q. So you --</p> <p>12 A. I'm just guessing logically based on the fact</p> <p>13 that it would be very -- achieving a hundred friends</p> <p>14 was -- was an extremely difficult task. You know, to</p> <p>15 get a hundred friends to, you know -- whether it's</p> <p>16 Facebook friends inviting friends to Facebook or</p> <p>17 whatever, you know, it takes a lot of work. So that's</p> <p>18 what I'm saying. It's just knowing the -- the amount of</p> <p>19 users. It's very unlikely that any of these users</p> <p>20 were -- you know, were not Orkut users.</p> <p>21 MR. CHATTERJEE: Let's mark this as Exhibit</p> <p>22 195.</p> <p>23 THE WITNESS: This is the e-mail I was</p> <p>24 referring to earlier which -- statistics e-mail I think</p> <p>25 that was sent on December 26th.</p> <p style="text-align: right;">Page 95</p>
<p>1 each (sic) friend invited" "but we're checking manually</p> <p>2 too." Do you see that?</p> <p>3 A. Correct.</p> <p>4 Q. Were -- were these -- was this discussion</p> <p>5 about Facebook and sending the hundred by hundred by</p> <p>6 hundred campaign through Facebook?</p> <p>7 A. This had nothing to do -- this has to do with</p> <p>8 the overall campaign. As you know, 90 -- probably 99</p> <p>9 percent of all activity of everything with Power was</p> <p>10 outside of Facebook. So, you know, that in general --</p> <p>11 because I think we saw, like, our total user base was --</p> <p>12 I don't know.</p> <p>13 Q. Five million or something?</p> <p>14 A. I think our registered user base was at that</p> <p>15 time, you know, 6, 7-something million. And there were</p> <p>16 a few -- I think a few thousand -- you have the exact</p> <p>17 numbers -- that had a Facebook. And even those users</p> <p>18 were primarily Orkut users. So their Facebook usage was</p> <p>19 extremely limited. They were just discovering Facebook.</p> <p>20 So this is -- this is the overall users. Most of those</p> <p>21 friends and most of those users -- just to be -- this is</p> <p>22 logical since most of our users were Orkut users and all</p> <p>23 their friends were -- were Orkut users.</p> <p>24 Logically -- you can confirm this -- probably</p> <p>25 even if they had created an Orkut -- a Facebook account</p> <p style="text-align: right;">Page 94</p>	<p>1 MR. CHATTERJEE: Yeah. Let's mark this as</p> <p>2 Exhibit 195.</p> <p>3 (Plaintiff's Exhibit No. 195 marked for</p> <p>4 identification.)</p> <p>5 Q. BY MR. CHATTERJEE: After you take a look at</p> <p>6 Exhibit No. 195, let me know.</p> <p>7 A. Okay. Yeah, I'm looking at it. Is there a</p> <p>8 question that you have on this?</p> <p>9 Q. What is this document?</p> <p>10 A. So this is a document that was on -- Facebook</p> <p>11 had actually sent us -- we were -- we were -- as you</p> <p>12 know, after this -- the conversations with Facebook's</p> <p>13 legal team started, we had regular conversations that</p> <p>14 were fairly open and transparent conversations about --</p> <p>15 you know, which you're most likely familiar with all the</p> <p>16 conversations that took place at that time.</p> <p>17 One of the questions that Facebook at that</p> <p>18 time asked us is obviously this information was fresh</p> <p>19 and we had fresh access to the database. They had asked</p> <p>20 us to know how many users. This was in reference to --</p> <p>21 to questions from Facebook.</p> <p>22 And we -- we went through a process with our</p> <p>23 guys asking them -- actually, I asked Eric and then if</p> <p>24 you can see just the -- the dialogue here, I'll just</p> <p>25 recount it so I don't miss a detail here. On December</p> <p style="text-align: right;">Page 96</p>

<p>1 25th I sent an e-mail to Eric saying that we were --</p> <p>2 that we were -- regarding taking Facebook offline. Then</p> <p>3 Eric sent -- and I -- and I communicated the range with</p> <p>4 him to get a range of questions that you asked. Do you</p> <p>5 have a translation of this?</p> <p>6 Q. I -- I -- I -- I have a rough translation.</p> <p>7 A. So then Eric sent this e-mail to Bruno and</p> <p>8 Elmo, copied also to a few others. And he said that</p> <p>9 we're probably going to take off on these days, take</p> <p>10 Facebook off the air, and Steve would like some</p> <p>11 statistics to know -- you know, before he makes, you</p> <p>12 know, this decision, this final decision. And is it</p> <p>13 possible to -- you know, to get this information. The</p> <p>14 number of users with a Facebook account, the number of</p> <p>15 users with a -- a Facebook account and who have Orkut --</p> <p>16 Orkut users who register for Facebook, the number of</p> <p>17 log-ins per day from the people with primary -- whose</p> <p>18 primary account is face -- so the primary -- primary</p> <p>19 accounts that are Facebook. And secondary refers to</p> <p>20 Orkut users that added a Facebook account. And then --</p> <p>21 and then the number five was the number of users with</p> <p>22 the -- with the secondary Facebook who access each day.</p> <p>23 Q. Okay.</p> <p>24 A. And then --</p> <p>25 Q. So let me ask you a few questions about this.</p> <p style="text-align: right;">Page 97</p>	<p>1 from?</p> <p>2 A. That would have come from our database.</p> <p>3 Q. And would that have come from the logger</p> <p>4 database or something else?</p> <p>5 A. I don't know the answer, but I would -- no.</p> <p>6 It would -- it would have come from the registered user</p> <p>7 database. We would have went into our -- our registered</p> <p>8 user database.</p> <p>9 Q. And why do you believe that?</p> <p>10 A. Because if I refer -- remember correctly, they</p> <p>11 -- that's where we store -- logger just stores, like,</p> <p>12 raw data. It would have -- like, really raw data. The</p> <p>13 registered user database stores specific data like --</p> <p>14 like this or accounts. Because I remember accessing</p> <p>15 this account many times when asking questions in</p> <p>16 previous conversations. So when I -- on a regular basis</p> <p>17 I would ask specific questions. And I -- I know that</p> <p>18 this was -- this was the database that would go into the</p> <p>19 database, the actual database, not into the log -- the</p> <p>20 log file.</p> <p>21 Q. Okay.</p> <p>22 A. You can see that we had about -- about 500</p> <p>23 users a day that were primary Facebook users that were</p> <p>24 accessing Facebook at that time. Five hundred, 600.</p> <p>25 MR. CHATTERJEE: Okay. Let's -- let's mark</p> <p style="text-align: right;">Page 99</p>
<p>1 A. Yeah.</p> <p>2 Q. This is -- this is the e-mail -- you had</p> <p>3 referred to a December 16th, 2008, document.</p> <p>4 A. No.</p> <p>5 Q. Was it actually December 26th?</p> <p>6 A. No. December 16 is the e-mail I just sent</p> <p>7 to -- to you.</p> <p>8 Q. Okay. So this is --</p> <p>9 A. I also referred to this e-mail earlier when</p> <p>10 you -- when we talked about statistics. Specific</p> <p>11 statistics. This is what I -- one of the reasons I said</p> <p>12 that you guys have asked very detailed questions</p> <p>13 relating to Facebook and users on multiple occasions</p> <p>14 over the last two, three years, and we have on every</p> <p>15 occasion provided this data. This is why --</p> <p>16 Q. Got it.</p> <p>17 A. -- on April 11th, you know, I don't think</p> <p>18 there was anything new to be discovered.</p> <p>19 Q. So where -- where this log-ins primary account</p> <p>20 with Facebook, these numbers that are listed on</p> <p>21 differing days in December 2008 --</p> <p>22 A. Yeah. So this is saying that there were a</p> <p>23 total of --</p> <p>24 Q. Hold on. Hold on. Let me ask my question.</p> <p>25 Where did you get -- do you know where that data came</p> <p style="text-align: right;">Page 98</p>	<p>1 this as Exhibit 196.</p> <p>2 (Plaintiff's Exhibit No. 196 marked for</p> <p>3 identification.)</p> <p>4 Q. BY MR. CHATTERJEE: Do you recognize this</p> <p>5 document?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Okay. In this e-mail you asked Eric Santos to</p> <p>8 tell you what appears to be included in the source code</p> <p>9 he sent you and what is not there.</p> <p>10 A. Correct.</p> <p>11 Q. Why did you do that?</p> <p>12 A. So on August 21st we -- we had already made a</p> <p>13 complete backup on the 11th of -- or back in April which</p> <p>14 was on this AsaDrive, A-s-a, Drive. I had as an</p> <p>15 additional backup just in case anything ever happened to</p> <p>16 AsaDrive.</p> <p>17 You know, I -- I had contacted Eric -- I was</p> <p>18 just -- I said Eric, is there anything that you might</p> <p>19 have -- anything Eric would have would have already been</p> <p>20 there. But I was -- I had worries that if -- if for any</p> <p>21 reason we lost the AsaDrive, I wanted to know if Eric</p> <p>22 had another backup and I was going to -- and that's why</p> <p>23 I was asking him what he had. So the good news is we</p> <p>24 didn't lose the AsaDrive, although I was not 100 percent</p> <p>25 confident in that. And so I -- this is this</p> <p style="text-align: right;">Page 100</p>

<p>1 conversation.</p> <p>2 And since we still had the AsaDrive this --</p> <p>3 this -- this request, although was kind of useless</p> <p>4 because it -- it was superceded by all the information</p> <p>5 that's on the AsaDrive. This was just me asking Eric do</p> <p>6 you happen to have some backups of the source code. You</p> <p>7 know, worst-case scenario. Because that -- that was the</p> <p>8 only place I had the -- the backup. So I was trying to</p> <p>9 find out if I had another backup that Eric might have</p> <p>10 had on his own, you know, available to him in some way.</p> <p>11 Q. So if -- if you look at Mr. Santos' response,</p> <p>12 he says he -- he said that he sent you all the Power</p> <p>13 code minus the database scripts, the system</p> <p>14 configurations, documentation, and the data of the</p> <p>15 databases.</p> <p>16 A. Correct.</p> <p>17 Q. And does that comport with your recollection</p> <p>18 that that's what was included in the source code he sent</p> <p>19 you?</p> <p>20 A. He -- he said that to me. I didn't do</p> <p>21 anything with that e-mail. Because it was just a -- I</p> <p>22 wanted to have -- I wanted to have in my e-mail a -- a</p> <p>23 backup of whatever he thought was latest if anything</p> <p>24 were ever to happen to the complete backup that we made</p> <p>25 with AsaDrive. So this was more a -- just a</p> <p style="text-align: right;">Page 101</p>	<p>1 files are really large, the stuff that you -- you have</p> <p>2 already had access to. So this was what Eric also had</p> <p>3 as an additional backup at that time. And I sent -- I</p> <p>4 asked Eric to send me everything that he had, you know,</p> <p>5 also. And of course this file you guys have access to,</p> <p>6 you know, in -- in the e-mail. I'm sure you made a copy</p> <p>7 of this file.</p> <p>8 Q. All right. So -- so basically you were just</p> <p>9 asking what he had in his own personal possession?</p> <p>10 A. Yeah. That's correct.</p> <p>11 Q. Okay.</p> <p>12 A. That's all this was.</p> <p>13 MR. CHATTERJEE: 197.</p> <p>14 (Plaintiff's Exhibit No. 197 marked for</p> <p>15 identification.)</p> <p>16 Q. BY MR. CHATTERJEE: After you read it, let me</p> <p>17 know.</p> <p>18 A. Okay. I've read it.</p> <p>19 Q. Okay. If you look at the -- there's a</p> <p>20 certified translation on this. If you look at the --</p> <p>21 the -- the -- the top e-mail, in other words the last</p> <p>22 e-mail on the string, it starts with "Can you look in</p> <p>23 there to see if the Powerscript for Facebook is in</p> <p>24 there?"</p> <p>25 A. Yep.</p> <p style="text-align: right;">Page 103</p>
<p>1 precautionary measure in the event that something</p> <p>2 happened with AsaDrives.</p> <p>3 Q. So when did he send you the source code? I</p> <p>4 thought the source code was maintained.</p> <p>5 A. Yeah, source code was maintained. As I said,</p> <p>6 this was really not -- this is not such a relevant</p> <p>7 e-mail. This was just I -- I -- I was -- I was</p> <p>8 concerned and worried that I only had one backup, so I</p> <p>9 just was curious what Eric might have had if -- if that</p> <p>10 somehow disappeared or -- or as you know, we had -- it</p> <p>11 took us a long time even to get -- because it was such</p> <p>12 -- so much data there.</p> <p>13 Q. Right. But my -- my question is very, very --</p> <p>14 A. Yeah.</p> <p>15 Q. -- simple. In this e-mail you say "...can you</p> <p>16 tell me what appears to be included in the source code</p> <p>17 you sent me...."</p> <p>18 A. So Eric --</p> <p>19 Q. What -- what is it that he sent you?</p> <p>20 A. So Eric had kept some specific parts of the</p> <p>21 core, most vital parts of the source code independent of</p> <p>22 the backup that he had on his local -- on the local</p> <p>23 drive. And he didn't have every single extensive file</p> <p>24 that ever existed which was on the main backup. This is</p> <p>25 what he had. So he didn't have -- because those other</p> <p style="text-align: right;">Page 102</p>	<p>1 Q. Do you see that?</p> <p>2 A. Correct.</p> <p>3 Q. Why were you asking Mr. Santos to figure out</p> <p>4 if the PowerScript for Facebook was in the backup?</p> <p>5 A. Because I believe at that time we were having</p> <p>6 conversations with Facebook and they were asking</p> <p>7 questions. And I was trying to provide the most</p> <p>8 accurate possible answers. And Eric -- Eric was someone</p> <p>9 that -- so I wanted him -- I -- I could look in there at</p> <p>10 the database, but I wanted him to also tell me, you</p> <p>11 know, just to help me better understand what was in</p> <p>12 there. I mean, I -- I just -- you saw what I did on --</p> <p>13 I backed up everything that existed. This was just</p> <p>14 trying to get from Eric more detail -- whatever details</p> <p>15 I could get, you know, on -- on there.</p> <p>16 Q. Okay.</p> <p>17 A. And obviously this were the conversations that</p> <p>18 we were having with Facebook at that time.</p> <p>19 Q. And did Mr. Santos do that?</p> <p>20 A. I believe with his limited time what he did,</p> <p>21 he just said -- well, you saw his answer. He says here</p> <p>22 from what I can see is -- is that all the -- the</p> <p>23 database is in the backup and -- and to, you know, have</p> <p>24 a hundred percent certainty, I would need to, you know,</p> <p>25 download and analyze with --</p> <p style="text-align: right;">Page 104</p>

<p>1 Q. The -- the -- the reason that I'm asking 2 about -- 3 A. Yeah. 4 Q. -- this specific beginning part -- 5 A. Yeah. 6 Q. -- is I didn't see a response -- 7 A. Yeah. 8 Q. -- to this e-mail. 9 A. Yeah. 10 Q. So I'm -- I'm wondering what happened after 11 you sent this series of questions on August 23rd, two 12 thousand -- 13 A. Nothing. He was too busy to -- to look 14 further. He -- he was -- he just gave me this answer 15 that it looks like all the relevant and important stuff 16 -- what -- what you see here is the database is the 17 conversation that we had. 18 Q. Okay. So, for example, on the second 19 paragraph you say "Also, is the script for our creation 20 of events and for our power 100 campaign? I would like 21 to discuss those scripts with you to get your thoughts 22 on them." 23 A. Yeah. 24 Q. My first question is did you ever talk to Mr. 25 Santos after sending this e-mail about the script for</p> <p style="text-align: right;">Page 105</p>	<p>1 at a lot of things. But naturally I wanted to get -- if 2 I could get any additional data, I wanted to be as 3 prepared as possible to provide as much data to you 4 guys. 5 THE VIDEOGRAPHER: Counsel, five minutes of 6 tape. 7 MR. CHATTERJEE: Okay. Why don't we go ahead 8 and take a -- a short break while we change the tape. 9 THE VIDEOGRAPHER: This ends videotape number 10 one in the continuing deposition of Power Ventures, Inc. 11 The time is 11:30 a.m. on January 9th, 2012, and we are 12 off the record. 13 (Whereupon a break was taken from 11:30 to 14 11:44.) 15 THE VIDEOGRAPHER: This begins videotape 16 number two in the continuing deposition of Power 17 Ventures, Inc. The time is 11:44 a.m. on January 9th, 18 2012, and we are back on the record. 19 MR. CHATTERJEE: 98? 20 THE REPORTER: Correct. 21 (Plaintiff's Exhibit No. 198 marked for 22 identification.) 23 Q. BY MR. CHATTERJEE: After you've reviewed the 24 document, Mr. Vachani, let me know. 25 A. Have you seen this? Okay.</p> <p style="text-align: right;">Page 107</p>
<p>1 creation of events and the Power 100 campaign? 2 A. To the best of my recollection, he didn't have 3 the time to -- to do that. But also to the best of my 4 recollection, I believe that you guys did have the time 5 to go through all those files and scripts and you know 6 better probably than Eric what's in there. 7 Q. The code would be the best evidence of that? 8 A. Yeah. The code's the best evidence. And he 9 just verified that he saw the most important stuff in 10 there, which is the database that's usually where -- 11 what he told -- what I remember him -- he said that's 12 where you would find these, it's inside the database, 13 and that database has been fully provided to you. 14 Q. All right. And so why -- why were you -- why 15 did you want to discuss the scripts with -- with Mr. 16 Santos and get his thoughts on them? 17 A. Well, as far as I understand face -- you guys 18 were asking a lot of questions. So I wanted to educate 19 myself and understand as best as possible, you know, in 20 relation to this case what -- you know, what was in 21 there and -- and so I could be fully prepared to discuss 22 and answer questions that you guys are asking. 23 Q. Was -- was that because Mr. Santos was more of 24 the -- the code writing technical expert than you? 25 A. He would know more -- if -- if -- I could look</p> <p style="text-align: right;">Page 106</p>	<p>1 Q. Do you recognize this document? 2 A. I do not. I mean, it's a -- I didn't -- I 3 haven't seen this e-mail at all in three years. But 4 yeah, I do. 5 Q. So this is an e-mail string between someone 6 named Joe Shapiro at USshow.com (verbatim) -- 7 A. Correct. 8 Q. -- you and Eric Santos, correct? 9 A. That's correct. 10 Q. I also see a reference to Gloria at power.com. 11 Who is that? 12 A. Gloria was a administrative assistant that 13 worked at the company. 14 Q. In -- on the second page -- well, on the first 15 page you'd agree with me Mr. Shapiro contacted Mr. 16 Santos and cc'd you asking a -- a serious -- a series of 17 questions about -- about accessing other web sites 18 through IP addresses, right? 19 A. Through -- relating to his Ushow, he was, 20 correct. 21 Q. Mr. Santos in the response to this e-mail on 22 December 12th, 2008, stated "Generally some social 23 networks" "terms have a clause to forbidden theirs users 24 to use external tools not affiliated." Do you see that? 25 A. Correct. Yes.</p> <p style="text-align: right;">Page 108</p>

<p>1 Q. At the time Mr. Santos was the chief 2 technology officer of -- of Power, right? 3 A. Correct. 4 Q. And -- and is it fair to say that at that 5 point in time the chief technology officer of Power 6 recognized that some social networks did not allow 7 external tools to access the social networking web 8 sites? 9 A. Yes. 10 MR. FISHER: Objection. Vague. Calls for 11 speculation. 12 THE WITNESS: I believe it's fair to say that 13 sites have terms in their own terms and conditions that 14 have stated things relating to this. That's correct. 15 Something that we've discussed many times in the past. 16 Q. BY MR. CHATTERJEE: And -- and at this point 17 in time Power knew that -- that Facebook's terms forbid 18 that, right? 19 A. Facebook's terms forbid users. That's 20 correct. 21 Q. Now, Mr. Santos makes a comment here "You 22 should put more ips in your proxy" servers. "We created 23 in our network a subnet only for proxy servers." 24 Do you see that? Do you know what he was 25 talking about when he referred to putting more IPs in</p> <p style="text-align: right;">Page 109</p>	<p>1 social" networks will to try to block your access by 2 delayed server response or denied some service. 3 THE REPORTER: Okay. Repeat that, please. 4 THE WITNESS: Delayed server response or 5 denied some service. So, yeah, he -- I think he's just 6 saying here that in general more IPs in your proxy 7 server. That's what -- exactly what it says in the 8 e-mail. 9 MR. FISHER: Objection. Vague. 10 Mischaracterizes the document. 11 Q. BY MR. CHATTERJEE: So we're -- we're going to 12 get back to this later. But the idea of having multiple 13 rotating IP addresses to avoid efforts to block Power 14 Ventures is an idea that goes back to the founding of 15 Power in 2005, right? 16 A. Not to block Power. It's, as I said, there 17 are standard -- when you're accessing with a -- a site 18 having multiple IP addresses with a proxy is -- is a 19 standard procedure. That's correct. It goes -- it goes 20 back to the beginning. It was not something that was 21 employed -- it's -- you know, for -- 22 Q. So -- so -- so -- 23 A. -- for Facebook. 24 Q. This is a -- I'm going to ask a really, really 25 precise question.</p> <p style="text-align: right;">Page 111</p>
<p>1 your proxy server? 2 A. I believe that our system has -- has always 3 had lot -- had a large range of IPs. That's just a -- 4 that just a standard system. In general we had been 5 operating for years before we -- this date. And when 6 you have a high-traffic site that's dealing with 7 browsers, proxies, independent of the site, this -- this 8 is a standard -- standard practice that we -- we had 9 implied -- we had put in a place with our browser 10 interacting the site over the previous two years. 11 Sometimes, as he refers to, there are standard 12 blocks of sites that just they don't know if it's a -- 13 you know, if it's a user or if it's a -- a -- you know, 14 some other kind of hacking tool. So, you know, when I 15 say "hacking tool," meaning things that are not related 16 to Power. These are things that -- like spiders that 17 Google sends out to sites that accesses stuff. And 18 there are many different types of servers. So in 19 general what -- I think he's just saying that -- what 20 he -- what he said here, is that as a general issue you 21 should put more IPs in your proxy server. 22 Q. Because it's hard to block them? 23 A. I think it -- as you -- if you read the 24 specific thing here, "You should put more ips" -- "If 25 you have" -- "If you have a high traffic, probably these</p> <p style="text-align: right;">Page 110</p>	<p>1 A. Okay. 2 Q. Which is since 2005, one of the reasons that 3 Power Ventures wanted to employ multiple IP addresses is 4 because it would make it more difficult for a web site 5 to block Power Ventures from accessing their web site? 6 And she can read it back if it's not clear. 7 MR. FISHER: Objection. Vague. 8 THE WITNESS: Okay. So let me -- let me 9 answer the question. Is it -- how -- when we started 10 building in 2006, everything that we were doing as a 11 company was new and innovative. There were no -- there 12 were -- we didn't know what was going to be happening in 13 the internet. We built a system that would -- we were 14 building a browser that was going to be interacting with 15 many sites. There was not some specific agenda. We -- 16 we know that anything is possible. So we built -- we -- 17 we looked -- we wanted -- in -- in our -- in our effort 18 for our users to be able to access the sites that they 19 want to access freely, we -- we built in a range of -- a 20 range of mechanisms, one of those being that IP 21 addresses rotate. Those blocks are not -- are -- are 22 many times automatic blocks that have nothing to do with 23 deliberate attempts to block. 24 In fact, most of those blocks historically 25 were not specifically intended at Power. They were</p> <p style="text-align: right;">Page 112</p>

<p>1 automatic things because they didn't know what was 2 accessing their site. And, in fact -- which a 3 conversation that we will probably get to later is that 4 we've actually had conversations with sites that just 5 wanted to under -- just came to us and said we'd like to 6 understand how your systems work. And then later said, 7 oh, okay, great, we just didn't know if this was a 8 standard site that was user driven or if this was some 9 type of other type of, you know, foreign, you know, 10 hostile entity.</p> <p>11 And most sites previously, with the exception 12 of Facebook, have come to the conclusion that, you know, 13 this was a user-generated activity. So I think it's 14 very easy -- you have to look at this as this was a 15 standard thing that was operating and operating in a 16 friendly manner with many sites without a problem, you 17 know, where usually it was a matter of just discussions 18 with sites. And that's the -- it is correct that this 19 is -- this -- this is a technique that was employed well 20 before Facebook and was utilized for, you know, two -- 21 not three year -- two years, about two years previously 22 for as we were building out this system.</p> <p>23 MR. CHATTERJEE: Move to strike as 24 nonresponsive. Could the court reporter read my 25 question back, please.</p> <p style="text-align: right;">Page 113</p>	<p>1 previous answers that I've already stated.</p> <p>2 Q. BY MR. CHATTERJEE: Okay. So beyond what 3 you've said, you're not changing your answer?</p> <p>4 A. That's correct.</p> <p>5 Q. You cannot answer that question with a yes or 6 a no?</p> <p>7 A. I've answered it. I've answered it as best as 8 I can.</p> <p>9 Q. Okay. So can you answer it with a yes or a no 10 or not?</p> <p>11 MR. FISHER: Asked and --</p> <p>12 THE WITNESS: I've answered --</p> <p>13 MR. FISHER: -- answered. Argumentative.</p> <p>14 THE WITNESS: I've answered the question.</p> <p>15 MR. FISHER: Let's move on.</p> <p>16 MR. CHATTERJEE: Okay. So let's mark this as 17 Exhibit 199 I think.</p> <p>18 (Plaintiff's Exhibit No. 199 marked for 19 identification.)</p> <p>20 Q. BY MR. CHATTERJEE: Before we go through the 21 depths of this e-mail, Mr. Vachani, this is a, I 22 believe, an instant chat log between you and someone 23 named Abi, A-b-i.</p> <p>24 A. Yeah. First of all, this is -- this is -- 25 this e-mail predates by a factor of almost a year and a</p> <p style="text-align: right;">Page 115</p>
<p>1 (Whereupon the record was read as requested.)</p> <p>2 THE WITNESS: Okay. So, as I said, the -- I 3 answered the question, I believe. Is that many sites 4 have standard responses to -- to entities that they do 5 not under -- which they have not interacted before, 6 especially when they have high traffic. And so this was 7 initially built with -- with that purpose, understanding 8 that -- and, in fact, I -- I believe the Electronic 9 Frontier Foundation has answered this question even more 10 articulately in the past. And rather than try you to, 11 you know, answer it again, I think that you should refer 12 to our previous responses on this.</p> <p>13 MR. CHATTERJEE: Move to strike as 14 nonresponsive. I'm going to ask you one more time. I'm 15 going to ask the court reporter to read it back. If 16 there's anything ambiguous about my question, I want you 17 to tell me.</p> <p>18 But could the court reporter read my question 19 back one more time. You aren't answering my question, 20 Mr. Vachani.</p> <p>21 MR. FISHER: He's answering the question, 22 Neel.</p> <p>23 MR. CHATTERJEE: Go ahead and read it back.</p> <p>24 (Whereupon the record was read as requested.)</p> <p>25 THE WITNESS: I would ask you to read back my</p> <p style="text-align: right;">Page 114</p>	<p>1 half power.com and the company and has nothing to do 2 with the company Power.</p> <p>3 Q. Okay. Who's Abi?</p> <p>4 A. Abi was a -- a guy that -- on the internet 5 that I had -- that I had met.</p> <p>6 Q. Had you hired him or were you working with him 7 in some way?</p> <p>8 A. I believe I just had a conversation with him 9 about -- we were having conversations just learning 10 about things on the internet. This was a year and a 11 half before Power was founded.</p> <p>12 Q. And were you discussing anything with Abi 13 about extracting data from the Orkut web site? You can 14 read the e-mail if you want.</p> <p>15 A. I have to read this here. Okay. I've read 16 it.</p> <p>17 Q. Okay. So generally speaking, what is this set 18 of instant messages back and forth about?</p> <p>19 A. So this is a -- about data extraction.</p> <p>20 Q. And data extraction for what purpose?</p> <p>21 A. This was for -- this was an exercise that we 22 discussed on -- this -- way before Power was started. 23 It was just a discussion on how -- ways -- ways that 24 that data could be extracted from sites that -- that -- 25 that were publicly, you know, accessible on the</p> <p style="text-align: right;">Page 116</p>

<p>1 internet.</p> <p>2 Q. Okay.</p> <p>3 A. Where you could go to a site that there's</p> <p>4 information that -- it has nothing to do with anything</p> <p>5 with the Power technology. It predates Power by about a</p> <p>6 year and a half, two years. And it was an exploration</p> <p>7 of just how sites store data and everything else.</p> <p>8 Q. All right. If you can go to the fourth page,</p> <p>9 about halfway down it says "Steve says: you understand</p> <p>10 the basic flow. A user will receive a standard</p> <p>11 invitation from a friend" --</p> <p>12 A. Yep.</p> <p>13 Q. -- "when they click on the invitation, they</p> <p>14 arrive on a page with a short description and prompting</p> <p>15 them to enter" "Orkut user name and password."</p> <p>16 Do you see that?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And -- and who -- what -- what were you</p> <p>19 outlining here? What was the business idea?</p> <p>20 A. So the discussion were if I -- if I was to</p> <p>21 invite a friend, they were basically looking at -- okay.</p> <p>22 So right now, as you know, Facebook is probably the</p> <p>23 world largest scraper historically. Has scraped</p> <p>24 billions of profiles and grew using this tactic for</p> <p>25 years where --</p> <p style="text-align: right;">Page 117</p>	<p>1 were asking the business model. The business model was</p> <p>2 that user-generated exporting of -- of -- of contact</p> <p>3 lists or other ways is a -- is a -- is a very commonly</p> <p>4 accepted practice that we were looking at new</p> <p>5 innovations. And this was -- this was a very early</p> <p>6 exploration of -- of different things and what --</p> <p>7 what -- what would happen. This was -- this has nothing</p> <p>8 -- this is -- that's what this conversation was about.</p> <p>9 Q. Okay. So if you go to the second page, about</p> <p>10 halfway down there's a reference "Abi says: when we</p> <p>11 will be going to startfetching (sic) profiles."</p> <p>12 Fair to say he probably meant fetching</p> <p>13 profiles?</p> <p>14 A. Fetching profiles.</p> <p>15 Q. Were you discussing with Abi the idea of</p> <p>16 fetching profiles from the Orkut web site?</p> <p>17 A. So we were discussing the idea of a user says</p> <p>18 here's my user and password, yes. And then Greg --</p> <p>19 basically discussing creating a more advanced exporting</p> <p>20 feet -- functionality feature.</p> <p>21 THE REPORTER: Okay. Slow down just a moment.</p> <p>22 "Basically..."</p> <p>23 THE WITNESS: We were discussing a way to</p> <p>24 create more powerful user-generated exporting</p> <p>25 functionality very similar to -- and that's why I</p> <p style="text-align: right;">Page 119</p>
<p>1 Q. Mr. Vachani --</p> <p>2 A. I'm --</p> <p>3 Q. -- stop.</p> <p>4 A. Listen to me.</p> <p>5 Q. Stop. Answer my question.</p> <p>6 A. I'm -- I'm -- I'm giving you a context. Would</p> <p>7 you listen to me?</p> <p>8 Q. I'm going to go to Judge Spero if this keeps</p> <p>9 happening and I'm going to insist that we do the</p> <p>10 deposition in his courtroom with him sitting there</p> <p>11 because you're not answering my question.</p> <p>12 A. I'm answering your --</p> <p>13 Q. My question is -- my question is what was the</p> <p>14 business model.</p> <p>15 A. You asked for a context. And I'm trying to --</p> <p>16 Q. I did not ask for context, Mr. Vachani.</p> <p>17 A. You asked what was the business model and I'm</p> <p>18 giving you a context that a user-generated invitations</p> <p>19 was something that we -- was acted on social networks.</p> <p>20 And we're exploring way -- the discussion here were --</p> <p>21 was hypothetical conversations to explore on -- on ways</p> <p>22 to increase the invitation conversion rates in a way</p> <p>23 where you can -- if the user gives the affirmation to</p> <p>24 make it easier to invite friends. This is what the</p> <p>25 conversation was discussing. And I was saying -- you</p> <p style="text-align: right;">Page 118</p>	<p>1 referred to Facebook and other social networks, because</p> <p>2 that was the inspiration. That they currently -- you</p> <p>3 give your user name and password, you go and you fetch</p> <p>4 profiles. And we were looking at ways to -- to not only</p> <p>5 fetch, you know, e-mail addresses, but where you can</p> <p>6 fetch an entire profile and export profiles. So I was</p> <p>7 exploring the subject of -- of -- of exporting profiles.</p> <p>8 Q. BY MR. CHATTERJEE: That was something similar</p> <p>9 to what Power Ventures ultimately did, right?</p> <p>10 A. It was a one -- exporting data is one -- was</p> <p>11 one function -- one -- one functionality of -- of -- of</p> <p>12 something. And this is....</p> <p>13 Q. And in 2005 you told Abi "we" "need to do some</p> <p>14 planning to make sure that we do it in a way where we</p> <p>15 are not really detected," correct?</p> <p>16 A. I said that we are -- that we would do it in a</p> <p>17 way -- I wanted to know what -- what are the types of</p> <p>18 things that will happen in data extraction. Because as</p> <p>19 you know, we have said this clearly and for the last</p> <p>20 three years that we believe that users have the right to</p> <p>21 export -- to own and control their own data and export.</p> <p>22 This is not a secret. And this is exactly all this --</p> <p>23 this conversation is saying that while other sites may</p> <p>24 not agree that user may -- a user has the right to</p> <p>25 own -- own and control their own data with -- we have</p> <p style="text-align: right;">Page 120</p>

<p>1 always believed that and we were exploring in those ways</p> <p>2 what would -- what we do if a user wants to get their</p> <p>3 data. And -- and this was a -- an exploration.</p> <p>4 Q. Let me establish some foundation around this,</p> <p>5 Mr. Vachani. You said in this instant message "we also</p> <p>6 need to do some planning to make sure that we do it in a</p> <p>7 way where we are not really detected," correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And the reason that you said that was because</p> <p>10 you didn't want web sites like Orkut to detect what you</p> <p>11 were doing, right?</p> <p>12 A. Not to detect. If -- if they attempted to</p> <p>13 block, block the -- the sites, we wanted to understand</p> <p>14 what are the issues.</p> <p>15 Q. And you wanted to be able to interfere with</p> <p>16 their ability to block you, right?</p> <p>17 MR. FISHER: Objection. Vague.</p> <p>18 Argumentative.</p> <p>19 THE WITNESS: To interfere with their ability</p> <p>20 to block, no. I'm saying -- we -- this -- exactly what</p> <p>21 it says here. We had a -- we had a hypothetical</p> <p>22 conversation about -- about the issues relating to data</p> <p>23 extraction where users wanted to access their own data.</p> <p>24 Q. BY MR. CHATTERJEE: And you knew that the web</p> <p>25 sites that were housing that data wouldn't like what you</p> <p style="text-align: right;">Page 121</p>	<p>1 conversation about -- about these issues.</p> <p>2 Q. BY MR. CHATTERJEE: So what you're saying is</p> <p>3 "we also need to do some planning to make sure that we</p> <p>4 do it in a away" that "we are not really detected" meant</p> <p>5 that it was hypothetical, not that there was actually a</p> <p>6 concern that someone might block you?</p> <p>7 MR. FISHER: Objection. Asked and answered.</p> <p>8 THE WITNESS: We had no idea what would</p> <p>9 happen. And all we know -- we know for -- I'll try to</p> <p>10 give you context again. When -- when Facebook accesses</p> <p>11 sites and pulls data, they -- they may -- there were --</p> <p>12 there were situations where sites have standard</p> <p>13 automatic blocks. I don't know what Facebook -- how</p> <p>14 Facebook, you know, continued to access, but they</p> <p>15 continued to pull data. So it's -- it's -- it's</p> <p>16 understood that -- that sites, you know, have -- have --</p> <p>17 have not always liked users to import their own data.</p> <p>18 But it's also understood that for the last -- the last</p> <p>19 few years it has been happening and it has been a</p> <p>20 standard practice. So --</p> <p>21 Q. BY MR. CHATTERJEE: Mr. Vachani, do you mean</p> <p>22 to suggest that the statement "we also need to do some</p> <p>23 planning to make sure that we do it in a way where we</p> <p>24 are not really detected" means anything other than what</p> <p>25 is said there?</p> <p style="text-align: right;">Page 123</p>
<p>1 were doing.</p> <p>2 A. We didn't know --</p> <p>3 MR. FISHER: Objection. Calls for speculation</p> <p>4 --</p> <p>5 THE WITNESS: We didn't know if they would</p> <p>6 like --</p> <p>7 THE REPORTER: Okay. Whoa. I'm sorry.</p> <p>8 Please restate your --</p> <p>9 THE WITNESS: We didn't know if they would</p> <p>10 like it or not --</p> <p>11 THE REPORTER: I'm sorry. Hold on. Please.</p> <p>12 MR. FISHER: Vague. Assumes facts not in</p> <p>13 evidence. Lacks foundation. Incomplete hypothetical.</p> <p>14 Argumentative.</p> <p>15 THE WITNESS: Okay. We didn't -- we have no</p> <p>16 idea what they were -- this is 2005. But we know that</p> <p>17 if -- if a user is -- obviously some sites and it turns</p> <p>18 out Facebook that, you know, in the future was -- was</p> <p>19 not Orkut. It was -- you know, Facebook does not -- did</p> <p>20 not want users to export their own data. And while --</p> <p>21 and we have always stated very publicly and clearly that</p> <p>22 we believe that users, you know, do have rights to</p> <p>23 access their data. So we were exploring and</p> <p>24 understanding what are the potential reactions that</p> <p>25 sites could have. This was a -- this was a hypothetical</p> <p style="text-align: right;">Page 122</p>	<p>1 A. I'm saying this is a conversation in 2005 that</p> <p>2 had nothing to do with the -- with the Power technology</p> <p>3 or the Power business. It was an -- it was specifically</p> <p>4 an exercise in user-generated access of their data and</p> <p>5 data where they're importing data from other sites and</p> <p>6 exploring the issues relating to that. That's all it</p> <p>7 was.</p> <p>8 Q. All right. And in 2005 you knew that possibly</p> <p>9 rotating IPs would be one way to avoid detection from</p> <p>10 the web sites in exporting data, correct?</p> <p>11 A. I -- we was -- it was one of the many things</p> <p>12 that were -- that were discussed in exploring what ways</p> <p>13 that sites will access sites.</p> <p>14 Q. Okay. Go to the next page top. It says</p> <p>15 "Steve says: we need to plan this very carefully."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. What did you mean when you said that?</p> <p>19 A. Exactly this. We need to -- we need to look</p> <p>20 at every detail.</p> <p>21 Q. Why?</p> <p>22 A. I think the -- the same question here is that</p> <p>23 we're -- we're look -- we're -- we were exploring every</p> <p>24 detail of -- of -- of -- of importing data and</p> <p>25 understanding that because some -- importing data is not</p> <p style="text-align: right;">Page 124</p>

<p>1 something that while it's a right and something that's</p> <p>2 been established that users have the right to do, not</p> <p>3 every site -- not every site wants users to -- to be</p> <p>4 able to get their own -- access their data. Obviously</p> <p>5 Facebook being one of the greatest, you know, companies</p> <p>6 that have traditionally been against -- been against</p> <p>7 this publicly. You know, users trying to access their</p> <p>8 own data. This is -- this is something that we -- we</p> <p>9 always understood that, you know, just because it's --</p> <p>10 it's correct and it's okay for users to access their own</p> <p>11 data doesn't mean that every site will -- will allow</p> <p>12 users to access their own data.</p> <p>13 Q. So you knew that the web sites may not like</p> <p>14 having users access and export data?</p> <p>15 A. Historically importing data has never been --</p> <p>16 has never -- many sites have always objected to it and</p> <p>17 it -- and despite that fact, it has been going on for</p> <p>18 ten years and been a commonly-accepted practice.</p> <p>19 Q. I understand that. But you -- you understand</p> <p>20 that even at the time you wrote this instant -- or the</p> <p>21 portions of this instant message chat log that web sites</p> <p>22 were often against exporting data from their web site to</p> <p>23 another place?</p> <p>24 MR. FISHER: Objection. Vague. Calls for</p> <p>25 speculation.</p> <p style="text-align: right;">Page 125</p>	<p>1 Do you see that?</p> <p>2 A. Uh-huh.</p> <p>3 Q. What data grab were you talking about?</p> <p>4 A. I think at that time we were exploring their</p> <p>5 -- what -- as our users where we were going to do a test</p> <p>6 camp -- a test campaign and test on -- on -- basically</p> <p>7 exploring data. Importing -- building importers,</p> <p>8 building new types of importers. And very -- you know,</p> <p>9 very similar to a comp -- this company that -- we were</p> <p>10 looking at the concept of building importers. That's</p> <p>11 what this -- this conversation was about, looking at</p> <p>12 building importers for different sites. Similar to the</p> <p>13 company that -- that Facebook bought.</p> <p>14 Q. Was this an activity that was being pursued by</p> <p>15 Serendipity?</p> <p>16 A. No. It was just a -- a -- an idea that --</p> <p>17 Serendipity didn't exist at this time.</p> <p>18 Q. Okay. Farther down you say "but we really</p> <p>19 need to plan out the specifics of the launch and the</p> <p>20 invitation to make sure we" "get the flow correctly."</p> <p>21 Do you see that?</p> <p>22 A. Correct.</p> <p>23 Q. And what -- what launch was being referred to</p> <p>24 there?</p> <p>25 A. This again was a -- was a hypothetical</p> <p style="text-align: right;">Page 127</p>
<p>1 THE WITNESS: I understood that. And I also</p> <p>2 understood that -- that's correct.</p> <p>3 Q. BY MR. CHATTERJEE: Okay. That's correct.</p> <p>4 And so one of the things that you wanted to do was to</p> <p>5 have multiple IP addresses to allow for the extraction</p> <p>6 of data without the ability of those web sites to block</p> <p>7 you; isn't that fair?</p> <p>8 A. If a user authorized that -- that, correct.</p> <p>9 That's something we've -- we've always said.</p> <p>10 Q. Okay. And -- and you said in -- in this chat</p> <p>11 log "since we will only have one chance to do it."</p> <p>12 What did you mean by "we will only have one</p> <p>13 chance to do it"?</p> <p>14 A. I believe that we were -- we were just sharing</p> <p>15 -- conversation that -- that accessing -- importing</p> <p>16 data, you know, we wanted -- we wanted to do it right.</p> <p>17 You know, we wanted to make sure that if a user wanted</p> <p>18 to access their own data that they would be able to do</p> <p>19 it. That's basically that -- we understood that import</p> <p>20 -- importing data is a sensitive -- is a sensitive</p> <p>21 subject, despite the fact that we strongly believe its</p> <p>22 the user's right. And that's basically what this</p> <p>23 discuss -- discussion was about.</p> <p>24 Q. Okay. Farther down you say "lets" "plan on</p> <p>25 getting the data grab done as soon as possible."</p> <p style="text-align: right;">Page 126</p>	<p>1 exploration of importing -- of -- of creating importers</p> <p>2 for -- which -- which had nothing to do -- this predated</p> <p>3 Power, but it had -- it was basically if -- if you're</p> <p>4 going to do imports, the goal here was to see, you know,</p> <p>5 the same thing -- the purpose of importing friends and</p> <p>6 data is that it -- it creates -- it creates things that</p> <p>7 are very viral. And if you can achieve a higher</p> <p>8 conversion rate in a -- when you're importing data and</p> <p>9 collecting the users' invitations, you can get virality.</p> <p>10 And so the goal here was -- it was -- it was a</p> <p>11 hypothetical exploration on how to optimize conversion</p> <p>12 rates when users are importing data.</p> <p>13 Q. So I'm going to go into more detail on this</p> <p>14 later. I just want to make sure this is clear. Power</p> <p>15 Ventures was founded to be a for profit business,</p> <p>16 correct?</p> <p>17 A. It was -- correct. Yes.</p> <p>18 Q. It wasn't an advocacy group?</p> <p>19 A. That's correct.</p> <p>20 Q. It wasn't a -- a public interest,</p> <p>21 501(c)(3)-type of organization?</p> <p>22 A. Correct.</p> <p>23 Q. Its goal was to acquire a large number of</p> <p>24 users and then develop a monetization strategy to make</p> <p>25 money?</p> <p style="text-align: right;">Page 128</p>

<p>1 A. Power's -- Power's goals have obviously 2 changed over the -- over the years. But Power's primary 3 goal, we were -- we were building a type of browser -- a 4 new type of browser to access the internet, we were 5 building a way to build apps on top of sites on the 6 internet. We were building a range of technologies that 7 would let users access -- access all their information 8 on all sites and in a -- in a -- and allow them to 9 aggregate that. We were building a wide range of 10 products and technologies.</p> <p>11 Q. Okay. Going back to -- to Exhibit 198, this 12 is the conversation with Mr. Shapiro.</p> <p>13 A. Yep.</p> <p>14 Q. Is there any -- if you look at the top two 15 e-mails there's a -- you asked Gloria the admin to 16 arrange a time for you to chat by phone or meet in 17 person with Mr. Shapiro. Do you see that?</p> <p>18 A. Uh-huh. Yeah.</p> <p>19 Q. Why is it you wanted to meet with him in 20 person rather than just answer his questions through 21 e-mail?</p> <p>22 A. He wanted -- I met a new contact and we were 23 -- we just wanted to meet. I mean, there's no -- that's 24 usually what happens when you meet people and discussing 25 business -- business strat -- business is you -- you</p> <p style="text-align: right;">Page 129</p>	<p>1 networks had tried to block you or any other web sites?</p> <p>2 A. I don't believe -- I don't believe I -- I 3 don't know -- I don't know, but I don't believe I 4 disclosed to him, you know, anything about private stock 5 in Power.</p> <p>6 Q. Okay.</p> <p>7 A. But that -- if there's an e-mail, I mean --</p> <p>8 Q. What about --</p> <p>9 A. If there's any other e-mail dialogue, I mean, 10 we can check. We can check. Whatever -- whatever I 11 said in e-mail would be there.</p> <p>12 Q. But what about -- I'm talking about live 13 outside of e-mail.</p> <p>14 A. Once again, I don't -- I don't know if I had 15 this meeting or not, but if -- if we looked at the date 16 here on Tuesday, I can probably -- probably try to see 17 where I was on that -- on Tuesday at 3:00 p.m.</p> <p>18 Q. So you don't have any recollections of any 19 discussions with Mr. Shapiro?</p> <p>20 A. I -- don't remember having anything meaning -- 21 any meaningful conversations that came out of -- out of 22 this, but I -- I have no -- I have no idea what we 23 talked -- I don't even remember what Ushow does. It was 24 some type of video project that he was working on.</p> <p>25 Q. So if Mr. Shapiro were to come in and testify</p> <p style="text-align: right;">Page 131</p>
<p>1 follow up and you -- and you -- if it seems interesting, 2 you meet -- you meet with the person. I don't know what 3 -- I don't know what the --</p> <p>4 Q. This is the exact same time you were having a 5 dispute with Facebook, right?</p> <p>6 A. This was during the time we were launching -- 7 we were launching power.com. That's correct.</p> <p>8 Q. And Mr. Shapiro asked you some very specific 9 questions, I think three specific questions --</p> <p>10 A. Yep.</p> <p>11 Q. -- in the e-mail, right?</p> <p>12 A. That's correct.</p> <p>13 Q. Is there any particular reason you didn't 14 answer in the e-mail?</p> <p>15 A. No, not at all.</p> <p>16 Q. Okay. Did you ever meet with him?</p> <p>17 A. I don't remember. I mean, but you probably 18 can look at my e-mails that you pulled from -- I'm sure 19 you pulled every e-mail with -- with Mr. Shapiro. I 20 don't remember the guy. I mean, I was -- this was a 21 conversation I had. I met dozens of people. But I'm 22 sure I could look back and find -- and see if I ended up 23 meeting with him or not.</p> <p>24 Q. During this time frame do you remember telling 25 anyone, including Mr. Shapiro, whether any social</p> <p style="text-align: right;">Page 130</p>	<p>1 that you told him that the proxy servers was an 2 effective tool to evade detection to allow -- to avoid 3 blocking, you wouldn't have any reason to dispute that 4 right?</p> <p>5 MR. FISHER: Objection. Vague. Assumes facts 6 not in evidence. Lacks foundation. Incomplete 7 hypothetical. Argumentative.</p> <p>8 THE WITNESS: As I said, I don't remember -- 9 I -- I -- I only -- I remember this conversation as much 10 as what's -- what's here. The content of what we -- if 11 we met or had a conversation, I -- I believe we did have 12 some -- had some kind of follow-up conversation. I 13 don't remember the details of that conversation.</p> <p>14 Q. BY MR. CHATTERJEE: Okay.</p> <p>15 A. If it was by phone or if it was -- it says I'm 16 available before 3:00 p.m. on Tuesday. I think we must 17 have spoke on the phone.</p> <p>18 Q. If Mr. Shapiro were to come in and say that -- 19 in answer to that second question that you had a 20 conversation with him --</p> <p>21 A. Yeah.</p> <p>22 Q. -- that said the -- the -- the subnet of proxy 23 servers was a strategy to avoid blocking, you wouldn't 24 have any reason to dispute that?</p> <p>25 MR. FISHER: Objection. Vague. Calls for</p> <p style="text-align: right;">Page 132</p>

<p>1 speculation. Assumes facts not in evidence. Lacks 2 foundation. Incomplete hypothetical.</p> <p>3 THE WITNESS: Again, I -- it's a hypothetical 4 question. I don't know what -- what he would say. And 5 I -- I -- I've said to him what I've said to you already 6 in the past, that users being able to access a site -- 7 you know, we've -- we've -- we've expressed our opinions 8 on -- on this -- on this issue of general issue of --</p> <p>9 Q. BY MR. CHATTERJEE: Mr. Vachani, I'm asking 10 something real simple.</p> <p>11 A. Okay.</p> <p>12 Q. You met with Joe Shapiro.</p> <p>13 A. Okay.</p> <p>14 Q. If he came in and testified as to the 15 details --</p> <p>16 A. I don't remember if I met with him or spoke to 17 him on the phone.</p> <p>18 Q. Right. And if he testified as to the details 19 of what was said at that meeting, you have no 20 recollection that would be able to controvert what was 21 said at that meeting, correct?</p> <p>22 MR. FISHER: Assumes facts not in evidence. 23 Lacks --</p> <p>24 THE WITNESS: Yeah. No, I --</p> <p>25 MR. FISHER: -- foundation. Incomplete</p> <p style="text-align: right;">Page 133</p>	<p>1 A. So most -- most likely if there were no e-mail 2 dialogues, you know, we may have spoken briefly and I 3 probably didn't -- didn't speak to him afterwards. I 4 don't remember the -- I remember the -- the Ushow 5 company, I mean, like, very vaguely. But I got tons of 6 people that would contact me about business development 7 or business ideas on a regular basis.</p> <p>8 Q. But as you sit here today you don't recall 9 anything about those discussions, right?</p> <p>10 A. I don't recall, no.</p> <p>11 MR. CHATTERJEE: Okay. Let's mark this as 1 12 -- 200.</p> <p>13 (Plaintiff's Exhibit No. 200 marked for 14 identification.)</p> <p>15 THE WITNESS: Okay.</p> <p>16 Q. BY MR. CHATTERJEE: Okay. Who is Michael 17 Ross?</p> <p>18 A. Michael Ross is a shareholder in the company.</p> <p>19 Q. Okay. And is he -- is he a current 20 shareholder in Power Ventures?</p> <p>21 A. I believe most -- most of the shareholders 22 with the exception of our series B still share -- 23 several of our series B shareholders still own shares in 24 the company.</p> <p>25 Q. What -- do you know what this e-mail is?</p> <p style="text-align: right;">Page 135</p>
<p>1 hypothetical.</p> <p>2 THE WITNESS: I'm sure if I -- I'm sure if 3 I --</p> <p>4 MR. FISHER: It's vague.</p> <p>5 THE WITNESS: I need to -- I need to -- I have 6 to remember what -- I have to refresh on this meeting. 7 It's been three years on a meeting that was not really 8 relevant, you know -- really relevant to -- to -- to our 9 company. It was a guy inquiring for his purposes about 10 general -- general things that -- about what he should 11 look for for creating a video site. So I don't remember 12 what specifically was -- but I'm sure once I looked 13 up -- remember who the guy was, look back at the stuff, 14 you know, I may remember more details of that meeting, 15 but at the moment I don't honestly remember extreme 16 details of that -- of that meeting or if it even took 17 place.</p> <p>18 Q. BY MR. CHATTERJEE: What specific things would 19 you need to look at in order to refresh your 20 recollection?</p> <p>21 A. I could go online first of all and see if I 22 did meet with him and see if I had -- do you have any 23 other e-mail dialogues that I had with him afterwards, 24 if any?</p> <p>25 Q. I don't believe there are.</p> <p style="text-align: right;">Page 134</p>	<p>1 A. I believe that on January 4th The New York 2 Times posted an article relating to the lawsuit. And I 3 believe Michael Ross was asking a question about that.</p> <p>4 Q. If -- and this is -- the top is your response 5 to Mr. Ross, right?</p> <p>6 A. That's correct.</p> <p>7 Q. In -- in this e-mail you say "Facebook took 8 what should have been a standard measure...." 9 Do you see that?</p> <p>10 A. Yeah.</p> <p>11 Q. What are you referring to there?</p> <p>12 A. Let me see what he's asking. So in any 13 situation in our system when the system cannot access 14 for whatever reason, one of the strategies -- one of the 15 things it does -- and this is as you -- as you've 16 already pointed out predates Facebook significantly. It 17 automatically -- it updates the IP addresses and it 18 continues to try to access. So a standard -- so if -- 19 if for any reason a site, you know, blocked us -- you 20 know, it didn't -- it was not able to enter the site, 21 the system would -- would go through a range of things 22 to make sure, you know, it was able to access the site. 23 And so updating the IP address is one of those, one of 24 the many, many, many things that are built in our system 25 to -- to do.</p> <p style="text-align: right;">Page 136</p>

<p>1 MR. CHATTERJEE: If we can mark this as 201. 2 (Plaintiff's Exhibit No. 201 marked for 3 identification.) 4 Q. BY MR. CHATTERJEE: The document that I've 5 given you marked as Exhibit 201 is a declaration you 6 submitted in this case on January 15th, 2010. 7 A. Correct. 8 Q. Do you recognize this document? 9 A. Yes. 10 Q. If you can look at paragraph 9 of the 11 declaration. Let me know when you're done looking, 12 reading. 13 A. Okay. 14 Q. Okay. The -- the standard measure that you 15 refer to in this e-mail to Michael Ross, is that -- is 16 that what's described in -- in paragraph 9 of Exhibit 17 2,000 -- Exhibit 201? 18 A. I don't believe it's exactly the same because 19 every site has different -- different ways of 20 triggering. For example, Google -- you know, Google has 21 blocks that are automatic that when there's too many -- 22 too many things coming from a specific IP address on a 23 site, they have -- every site has different types of 24 measures that -- that are put in place and they're not 25 specifically related to -- to -- you know, to Power.</p> <p style="text-align: right;">Page 137</p>	<p>1 to access it, one of many things it would do, it would 2 up -- it would update the -- the IP address. 3 Q. Right. And so you -- you recognize that 4 Facebook took a measure to block access from the Power 5 web site? 6 A. I think this issue has been, yes, has been 7 discussed before in the past. 8 Q. You agree with that? 9 A. Yes. 10 Q. Okay. And then in this e-mail you say we were 11 able to easily adjust. What are you referring to there? 12 A. I said our system -- system when it cannot 13 access a site for -- it goes -- it goes through a range 14 of checks and one of the things that it updates the IP 15 address. 16 Q. So when -- when the IP -- if I use the term IP 17 blocking, do you know what that means? 18 A. Yeah. 19 Q. So when Facebook implemented IP blocking, what 20 you're talking about here is you had this technology 21 developed to use a different IP address? 22 A. Right. That's one of the many troubleshooting 23 measures of the system. And this is predating Facebook. 24 It has nothing to do with -- for any reason it's not 25 accessing a site, it -- it -- it might -- it could be</p> <p style="text-align: right;">Page 139</p>
<p>1 They're -- and so one of our -- one of our standard 2 things our system does when it access a site, it -- one 3 of the things is it updates the IP address as a -- as 4 a -- why -- why is it not being able to access this 5 site. 6 Q. Right. So -- 7 A. So no, I don't think this is referring 8 specifically, you know.... Here. Let me read this 9 again. All -- all -- all I believe number 9 is talking 10 about is that face -- that according -- that Facebook 11 implemented -- that Facebook is saying that they 12 implemented measures to block users from accessing 13 Facebook. 14 Q. Right. So the technical measures that 15 Facebook implemented that you're talking about here in 16 the declarations, were those these standard measures 17 that you said Facebook took in Exhibit 200? 18 A. I don't -- I don't know if these -- I think 19 those are -- here's -- let's see here. Yeah, 20 Facebook -- what I say here, these -- I guess -- I don't 21 know if it's the same measures. I honestly -- this is 22 -- but this is -- right here is referring to the fact 23 that users were not able to access the site. 24 Q. And.... 25 A. And our system -- if the -- if it was unable</p> <p style="text-align: right;">Page 138</p>	<p>1 logical reasons. There are sites that as you said -- as 2 I said in the past, we've had -- we've dealt -- this 3 issue was -- has gone on for -- updating IPs is a 4 standard -- standard measure that the system does when 5 it cannot access a site. 6 Q. Right. But when -- when Facebook put in place 7 an IP blocking tool -- 8 A. Yeah. 9 Q. -- Power then as part of its checks modified 10 its IP address in order to -- 11 A. Well, Power -- Power's IP address -- 12 MR. FISHER: Objection. Assumes facts not in 13 evidence. Lacks foundation. 14 Q. BY MR. CHATTERJEE: Let me -- let me finish 15 asking the question. When Facebook put in place an IP 16 blocking technology, the Power technology as part of its 17 checks used a different IP address, correct? 18 A. Power has -- Power has many IPs. As you've -- 19 as you've already established today, we've always had a 20 large range of IPs. And the system will -- will 21 continue to rotate IPs if -- if it cannot access a site. 22 Q. And that happens in this instance when 23 Facebook blocked one IP address? 24 A. I'm assuming that -- that it happened, yes. 25 MR. CHATTERJEE: Okay. Let's mark this as</p> <p style="text-align: right;">Page 140</p>

<p>1 Exhibit 201.</p> <p>2 THE REPORTER: 202.</p> <p>3 MR. CHATTERJEE: 202. Sorry.</p> <p>4 (Plaintiff's Exhibit No. 202 marked for</p> <p>5 identification.)</p> <p>6 Q. BY MR. CHATTERJEE: This is a declaration you</p> <p>7 submitted, Mr. Vachani, on December 12th, 2011. Do you</p> <p>8 see that?</p> <p>9 A. Yep.</p> <p>10 Q. It was truthful and accurate when you</p> <p>11 submitted it to the court?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Turn to paragraph 11. Paragraph 11 you</p> <p>14 say "Power did not undertake any effort to circumvent</p> <p>15 that block, and did not provide users with any tools</p> <p>16 designed to circumvent it."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Was that statement truthful?</p> <p>20 A. "Power did not undertake any...." Well, we --</p> <p>21 as I said, our system -- our system was a -- a</p> <p>22 rotating -- addresses were -- we have a lot of IP</p> <p>23 addresses. So, I mean, this is a --</p> <p>24 Q. So -- so let me ask a question. Was the use</p> <p>25 of the rotating IP address a tool that Power used?</p> <p style="text-align: right;">Page 141</p>	<p>1 Q. Was that sentence a truthful and accurate</p> <p>2 statement?</p> <p>3 A. I believe --</p> <p>4 Q. In light of what you just said with -- with --</p> <p>5 with respect to Exhibit 200.</p> <p>6 A. Sure. I'm saying that our sys -- our system</p> <p>7 -- what I've said to you is that our system utilized</p> <p>8 many IP addresses and these IP addresses update and</p> <p>9 rotate on a regular basis. If -- you know, as a</p> <p>10 standard thing. To say that we took a specific -- that</p> <p>11 it was specifically to circumvent and block, I mean that</p> <p>12 -- I believe that's a -- that's a -- that's a subjective</p> <p>13 conversation. We -- we obviously, you know, have --</p> <p>14 have a system that rotates if it cannot access a site.</p> <p>15 So this is -- this is right here --</p> <p>16 Q. Was that statement truthful and accurate, yes</p> <p>17 or no?</p> <p>18 A. So it says here "Nevertheless, Facebook's IP</p> <p>19 block was ineffective because it blocked only one" "IP</p> <p>20 address" that had -- Power used. It "did not block</p> <p>21 other IPs that Power was using in" its "normal course of</p> <p>22 business." That's correct.</p> <p>23 Q. Okay. Was the first sentence "Power did not</p> <p>24 undertake any effort to circumvent that block, and did</p> <p>25 not provide users with any tools to circumvent it."</p> <p style="text-align: right;">Page 143</p>
<p>1 A. This was -- this was a standard part of our</p> <p>2 system.</p> <p>3 Q. Okay.</p> <p>4 A. The IP addresses were -- were changing. So I</p> <p>5 don't know how you -- what you want to -- what you want</p> <p>6 to call that.</p> <p>7 Q. Okay.</p> <p>8 A. You want to call that a tool or you want to</p> <p>9 call that -- I mean, it -- it -- it had -- it had been</p> <p>10 part of our system, you know, for a long time.</p> <p>11 Q. Let's start with the basics. That first</p> <p>12 sentence of paragraph 11.</p> <p>13 A. Okay.</p> <p>14 Q. Was that a true statement?</p> <p>15 A. Again, I don't -- I don't know how to -- how</p> <p>16 to interpret this. This is saying that -- let me -- let</p> <p>17 me -- let me answer this.</p> <p>18 Q. No. Let's start with the beginning, Mr.</p> <p>19 Vachani.</p> <p>20 A. Okay.</p> <p>21 Q. The first -- that's your testimony, right?</p> <p>22 A. Correct.</p> <p>23 Q. You know what you meant when you said it,</p> <p>24 right?</p> <p>25 A. Yep.</p> <p style="text-align: right;">Page 142</p>	<p>1 Do you see that sentence?</p> <p>2 A. Yeah.</p> <p>3 Q. So was that statement truthful and accurate?</p> <p>4 A. We're not giving users tools. This was a --</p> <p>5 this was a -- our -- our system, as -- as it states in</p> <p>6 this -- in that same sentence, the block was ineffective</p> <p>7 because it blocked one -- one IP address Power used. It</p> <p>8 did not block other IPs that Power was using in its</p> <p>9 business. As you've established, Power had -- Power has</p> <p>10 had many IP addresses. We -- we continue to rotate</p> <p>11 them. It's a standard part of our business and it had</p> <p>12 been for a long time well before Facebook. So that's --</p> <p>13 that's what this statement is saying. We didn't -- we</p> <p>14 didn't go out and create some new system just for</p> <p>15 Facebook. This was a standard part of our business that</p> <p>16 if a browser was trying to access a site and it -- and</p> <p>17 it would -- it would automatically -- it -- you know,</p> <p>18 it's a standard thing. For some reason it's not</p> <p>19 accessing it, it had -- there was always many IP</p> <p>20 addresses. And that's what number 11 says. It says</p> <p>21 "Nevertheless, Facebook's IP block was ineffective</p> <p>22 because it blocked only one" -- "one" "IP address Power</p> <p>23 had used, and did not block other IPs that Power was</p> <p>24 using in the" -- "in the normal course of business."</p> <p>25 Q. Did you attempt -- did you attempt to be</p> <p style="text-align: right;">Page 144</p>

<p>1 misleading in your submission to the court under oath in 2 paragraph 11? 3 A. No. 4 MR. FISHER: Objection. Argumentative. 5 Q. BY MR. CHATTERJEE: That's truthful and 6 accurate? 7 A. Yes. That's exactly what it says. 8 Q. So when -- when Power accessed the Facebook 9 web site, I believe your testimony has been it would be 10 only at the direction of a user, correct? 11 A. The user chose to access the site, correct. 12 Q. So isn't it fair to say that when a user is 13 accessing Facebook through the power.com web site, 14 anything that's being done to do that is a tool that the 15 user is using? 16 MR. FISHER: Objection. Vague. Assumes facts 17 not in evidence. Lacks foundation. 18 THE WITNESS: It's -- it's a vague statement. 19 Q. BY MR. CHATTERJEE: How do you reconcile the 20 statement in Exhibit 200 where you say "we were able to 21 easily adjust" with your unequivocal statement in 22 paragraph 11 that "Power did not take any effort to 23 circumvent that block..."? 24 MR. FISHER: Objection. Argumentative. 25 THE WITNESS: So I -- I've stated this already</p> <p style="text-align: right;">Page 145</p>	<p>1 Q. Did power.com through its rotating IP address 2 approach circumvent the block that Facebook put in place 3 or not? 4 A. That's where for you -- I think we've stated 5 in -- in -- in statement 11 our opinion on this issue. 6 MR. CHATTERJEE: Would you read the question 7 again, please, Madam Court Reporter. 8 (Whereupon the record was read as requested.) 9 THE WITNESS: And I'll read this answer again. 10 "Nevertheless, Facebook's IP block was ineffective 11 because it blocked only one outdated IP address" and 12 Power used and did not block other I -- 13 THE REPORTER: I'm sorry. 14 THE WITNESS: Sorry. 15 THE REPORTER: Blocked only one data IP 16 address? 17 THE WITNESS: "...blocked only one outdated IP 18 address" that "Power had used, and did not block other 19 IPs that Power was using in" its "normal course of 20 business." 21 Q. BY MR. CHATTERJEE: Okay. 22 A. I -- I'm repeating what was stated in number 23 11 in answering your question. 24 Q. The -- the -- the problem is paragraph 11 is a 25 declaration that you submitted to the court.</p> <p style="text-align: right;">Page 147</p>
<p>1 and I'll state it again. Power -- the -- as it states 2 right here, "Facebook's IP block was ineffective because 3 it blocked only one" "IP address" and "did not block 4 other IPs...." So the statement -- you -- you're trying 5 to take the full statement of number 11 where we clarify 6 that -- that Facebook did have an IP block and why -- 7 and so we were truthfully saying it was ineffective 8 because it only blocked one. And that's why users were 9 able to continue to access the site. So we're not 10 hiding the fact that our -- that our -- that we utilized 11 an IP rotating database. We've given you access to our 12 server code that states this and -- and we're saying 13 here. So if you -- if -- and so our -- our -- our 14 interpretation of this and our -- our belief is that if 15 the -- if this is -- this is -- this was always a 16 standard part of our business and it -- we don't -- we 17 don't see anything wrong -- we don't see anything wrong 18 that if a user is coming to our site and the system 19 updates in order to access it. 20 Q. BY MR. CHATTERJEE: Move to strike as 21 nonresponsive. I'm not asking whether you see something 22 right or wrong. 23 A. Okay. 24 Q. Let me just ask it a real simple way. 25 A. Okay.</p> <p style="text-align: right;">Page 146</p>	<p>1 A. Yeah. 2 Q. That isn't a question you were asked. 3 Read the question again -- 4 A. Okay. 5 MR. CHATTERJEE: -- Madam Court Reporter. 6 (Whereupon the record was read as requested.) 7 THE WITNESS: And I'm saying that number 11 -- 8 I'm repeating that again. Face -- that -- that's my 9 answer. It's what we've already stated in this 10 statement. 11 Q. BY MR. CHATTERJEE: Why can't you answer my 12 question with a yes or no? 13 MR. FISHER: Objection. Argumentative. 14 THE WITNESS: I've just answered it. 15 MR. FISHER: Objection. Argumentative. 16 THE WITNESS: I've answered it more -- more 17 descriptively and I've actually reinstated the same 18 statement that I've -- that I've said here in this -- in 19 this testimony. 20 Q. BY MR. CHATTERJEE: You haven't. Because the 21 way that this question is answer it -- is answering it 22 is you're saying there's a specific block that's put up 23 and there wasn't a preexisting technology. Right? 24 That's the assumption in this -- in this statement. 25 My question is when the block was put up, did</p> <p style="text-align: right;">Page 148</p>

<p>1 Power Ventures circumvent it or not?</p> <p>2 MR. FISHER: Objection. Argumentative.</p> <p>3 Vague. Mischaracterizes prior testimony.</p> <p>4 THE WITNESS: I --</p> <p>5 MR. FISHER: Mischaracterizes his declaration.</p> <p>6 THE WITNESS: I think the statement already</p> <p>7 answers the question. And if you don't -- if you</p> <p>8 disagree, then you disagree.</p> <p>9 Q. BY MR. CHATTERJEE: Were you lying to your</p> <p>10 investor when you said you were able to easily adjust?</p> <p>11 MR. FISHER: Objection. Argumentative.</p> <p>12 Mischaracterizes the exhibit.</p> <p>13 THE WITNESS: I'm saying to you that -- that</p> <p>14 -- that the block was ineffective because it blocked</p> <p>15 only one address. And I've also said to you -- said to</p> <p>16 you that our system, you know, all -- this is a standard</p> <p>17 feature in our system that if it cannot access it</p> <p>18 automatically, it automatically tries again. So if</p> <p>19 you -- if you want to -- we've -- that's what we've</p> <p>20 always said. It's not -- it's exactly what we said in</p> <p>21 this statement, that we use multiple IP addresses. We</p> <p>22 have said that. And finally, there have been arguments</p> <p>23 in the past we've -- where we've discussed this issue in</p> <p>24 our -- in our -- in our thoughts and what we've done.</p> <p>25 Q. BY MR. CHATTERJEE: Okay. So the rotating IP</p> <p style="text-align: right;">Page 149</p>	<p>1 read the question back.</p> <p>2 (Whereupon the record was read as requested.)</p> <p>3 THE WITNESS: I think I've answered the</p> <p>4 question. I mean, I've answered the question already.</p> <p>5 MR. FISHER: Asked and answered.</p> <p>6 MR. CHATTERJEE: You didn't. You read your</p> <p>7 declaration. That question's different.</p> <p>8 MR. FISHER: That's --</p> <p>9 THE WITNESS: I've -- I've -- I've given you</p> <p>10 the same answer. That's the same answer.</p> <p>11 Q. BY MR. CHATTERJEE: Is it a yes?</p> <p>12 A. I've answered it. I don't need to -- I've</p> <p>13 answered it -- I've answered the question.</p> <p>14 Q. Let me -- let me put it this way.</p> <p>15 A. And I've kept it consistent with the same</p> <p>16 answer that we --</p> <p>17 Q. Let me put it this way. After Facebook</p> <p>18 implemented a block -- you're with me so far? Facebook</p> <p>19 did implement a block. You know that, right?</p> <p>20 A. And that's what -- we -- we said that today.</p> <p>21 Q. I don't care whether you think --</p> <p>22 A. Facebook's -- Facebook's IP block was</p> <p>23 ineffective. So therefore the answer -- you've -- this</p> <p>24 question's already been answered in my declaration and</p> <p>25 I've repeated it about four times.</p> <p style="text-align: right;">Page 151</p>
<p>1 approach was -- one of the purposes was to allow for</p> <p>2 access when a web site blocked you, right?</p> <p>3 A. The rotating IP address just -- it's a</p> <p>4 standard thing. If it cannot access a site it -- it --</p> <p>5 it tries again with another IP address. It doesn't know</p> <p>6 what the reason. It's a standard feature that -- and</p> <p>7 that's what we say here "Facebook's" "block was</p> <p>8 ineffective because it blocked only one outdated IP</p> <p>9 address Power used, and did not block other IPs that</p> <p>10 Power was using in" its "normal course of business." I</p> <p>11 mean, I've answered this question many times already.</p> <p>12 And I'm -- and it's the same statement that we made</p> <p>13 here.</p> <p>14 Q. All right. Did Power's rotating IP addresses</p> <p>15 allow a Power user to access the Facebook web site</p> <p>16 despite the fact that Facebook had implemented a block?</p> <p>17 MR. FISHER: Objection. Vague.</p> <p>18 THE WITNESS: I'll answer it again.</p> <p>19 Facebook's IP block -- this answers the question right</p> <p>20 there. It -- it obviously says it was ineffective and</p> <p>21 therefore the user accessed the site because it only --</p> <p>22 it only blocked one IP address that Power had used and</p> <p>23 did not block other IPs that Power was using in its</p> <p>24 normal course of business.</p> <p>25 MR. CHATTERJEE: Madam Court Reporter, please</p> <p style="text-align: right;">Page 150</p>	<p>1 Q. So you know that Facebook implemented a block,</p> <p>2 correct?</p> <p>3 A. I think we've answered that question.</p> <p>4 Q. Did you know that Facebook implemented a</p> <p>5 block --</p> <p>6 A. Did I know?</p> <p>7 Q. -- in 2008?</p> <p>8 A. Or did our system -- did I know? Our system,</p> <p>9 as I've said, it cannot access a site. So it -- it</p> <p>10 updated. It used another IP address to access it. So</p> <p>11 you can interpret that however. We've -- we've already</p> <p>12 stated this.</p> <p>13 Q. So Power system knew that Facebook was not</p> <p>14 allowing access from that IP address?</p> <p>15 A. I'm sorry. I've answered this -- I've</p> <p>16 answered this question already.</p> <p>17 Q. Did Power system know that Facebook was not</p> <p>18 allowing access from an IP address? Yes or no? It's</p> <p>19 not a difficult question, Mr. Vachani.</p> <p>20 A. And I've answered this. I think -- I think</p> <p>21 our statement's already addressed this. And I'm -- and</p> <p>22 I'm repeating the same answer.</p> <p>23 Q. I'm trying to break it down into smaller</p> <p>24 components --</p> <p>25 A. Okay.</p> <p style="text-align: right;">Page 152</p>

<p>1 Q. -- so I can understand your testimony.</p> <p>2 A. Okay.</p> <p>3 Q. Did Power's system know that Facebook had</p> <p>4 implemented a block to a particular IP address?</p> <p>5 A. Look, Power -- what Power system knew, that it</p> <p>6 was not -- that it was not accessing the site. And as I</p> <p>7 said multiple times, our system when it cannot access a</p> <p>8 site it automatically uses -- it uses other IPs in the</p> <p>9 system that we have been using in our -- in our business</p> <p>10 and it accesses the site.</p> <p>11 Q. And after that block was in place, Power users</p> <p>12 were given the ability to access Facebook through a</p> <p>13 different IP address, correct?</p> <p>14 A. I think I've answered that question already.</p> <p>15 Q. Is it a yes?</p> <p>16 A. Again, I don't -- I don't need to answer yes</p> <p>17 or no. I've answered it. I've answered it exactly the</p> <p>18 way we've answered it in the past. And I've --</p> <p>19 Q. So could -- could they access it?</p> <p>20 A. You can -- you can interpret that as -- as how</p> <p>21 you want to interpret that. Again, if you want me to</p> <p>22 read this, I'll repeat this again.</p> <p>23 MR. CHATTERJEE: Okay. So, Tim, we're going</p> <p>24 to have a meet and confer after this. And I'm going to</p> <p>25 ask the court to have a deposition of Mr. Vachani in</p> <p style="text-align: right;">Page 153</p>	<p>1 that, correct?</p> <p>2 A. If it could not access a site, it -- it -- it</p> <p>3 had -- we had -- our system always had many IP</p> <p>4 addresses. That's -- that's been part of the standard</p> <p>5 part of the feature and it -- and it would -- and that's</p> <p>6 correct.</p> <p>7 Q. And you did it with all of the social</p> <p>8 networking web sites, right?</p> <p>9 A. Did it with all of the sites. That's correct.</p> <p>10 Q. It was part of the core browser functionality?</p> <p>11 A. That's correct. And that's exactly what we</p> <p>12 said in statement 11.</p> <p>13 MR. FISHER: Is now a good time for a break,</p> <p>14 Neel?</p> <p>15 MR. CHATTERJEE: Yeah, we can take a lunch</p> <p>16 break.</p> <p>17 THE VIDEOGRAPHER: We are going off the</p> <p>18 record. The time is 12:44 p.m.</p> <p>19 (Whereupon a lunch break was taken from 12:44</p> <p>20 to 1:33.)</p> <p>21 THE VIDEOGRAPHER: We are back on the record.</p> <p>22 The time is 1:33 p.m.</p> <p>23 MR. CHATTERJEE: I want to mark this. This is</p> <p>24 your previous deposition testimony.</p> <p>25 THE WITNESS: Okay.</p> <p style="text-align: right;">Page 155</p>
<p>1 Judge Spero's courtroom because he's not answering the</p> <p>2 questions.</p> <p>3 THE WITNESS: Why am I not answering the</p> <p>4 question? I've answered the question.</p> <p>5 Q. BY MR. CHATTERJEE: It's a very simple</p> <p>6 question, which is after Facebook put in place the block</p> <p>7 of the IP address could a Power user through the Power</p> <p>8 browser access the Facebook web site through a different</p> <p>9 IP address?</p> <p>10 A. Yes. Well, the -- the -- the system --</p> <p>11 Q. Now --</p> <p>12 A. The system --</p> <p>13 Q. Hold on.</p> <p>14 MR. FISHER: Let him finish his answer.</p> <p>15 THE WITNESS: Go ahead.</p> <p>16 Q. BY MR. CHATTERJEE: And that different IP</p> <p>17 address was an IP address that Power provided?</p> <p>18 A. Which Power -- it was all -- it was -- it's --</p> <p>19 not which Power provide -- you're using terminology.</p> <p>20 It's -- it's -- it's a Power IP address.</p> <p>21 Q. Okay.</p> <p>22 A. It's an existing Power IP address. They don't</p> <p>23 provide the IP address. It's a -- it's an address.</p> <p>24 Q. And before Facebook ever put in place a</p> <p>25 blocking measure, Power had designed its system to do</p> <p style="text-align: right;">Page 154</p>	<p>1 MR. CHATTERJEE: I don't know what we're on.</p> <p>2 THE WITNESS: Are we moving to the second?</p> <p>3 Are we done the corporate or are you....</p> <p>4 MR. CHATTERJEE: No. Still --</p> <p>5 THE WITNESS: Okay. I just want to know.</p> <p>6 It's not a big deal, but just let me know.</p> <p>7 MR. CHATTERJEE: We'll -- we'll -- we'll deal</p> <p>8 with that in a second.</p> <p>9 THE WITNESS: Sure.</p> <p>10 MR. FISHER: Are you marking this one?</p> <p>11 MR. CHATTERJEE: Let's not. I'll just ask</p> <p>12 some questions.</p> <p>13 Q. I'm going to just -- Mr. Vachani, there are a</p> <p>14 couple things in your previous testimony that I want to</p> <p>15 at least make sure were cleared up here.</p> <p>16 A. Sure.</p> <p>17 Q. And I put a copy of your previous deposition</p> <p>18 transcript --</p> <p>19 A. Okay.</p> <p>20 Q. -- in front of you. And I just -- I want to</p> <p>21 make sure that -- that I kind of understand a few</p> <p>22 things. If you turn to page 59 of your -- of your</p> <p>23 deposition.</p> <p>24 A. Okay.</p> <p>25 Q. In -- in -- if you can read through lines 10</p> <p style="text-align: right;">Page 156</p>

<p>1 through 18 of page 59. Let me know when you're done.</p> <p>2 A. Okay.</p> <p>3 Q. Okay. In -- in your previous deposition was</p> <p>4 taken around July of 2011, you made the statement "We</p> <p>5 copied everything on the servers," and you're referring</p> <p>6 to a backup.</p> <p>7 Do you see that?</p> <p>8 A. Yep.</p> <p>9 Q. That was the AsaDrive?</p> <p>10 A. That was the AsaDrive, correct.</p> <p>11 Q. And would you agree with me that in light of</p> <p>12 your testimony today that -- that there was a slight</p> <p>13 inaccuracy in that testimony in the sense that not</p> <p>14 everything was -- was copied from the servers to the</p> <p>15 backup? There were at least one thing that was not</p> <p>16 copied.</p> <p>17 A. There were two files which the PowerFriends</p> <p>18 and the PowerLogger which were not -- did not succeed.</p> <p>19 Q. Right. So this testimony was slightly</p> <p>20 inaccurate, right?</p> <p>21 A. That's -- yeah. We discovered that later.</p> <p>22 Yeah. We -- well, we -- yeah. That's correct.</p> <p>23 Q. And -- and --</p> <p>24 A. You can --</p> <p>25 Q. And the -- the activities with the AsaDrive</p> <p style="text-align: right;">Page 157</p>	<p>1 A. Yeah. I did instruct them.</p> <p>2 Q. Okay. We did not see that.</p> <p>3 A. Okay.</p> <p>4 Q. That e-mail. So if you --</p> <p>5 A. I'm pretty sure I have it.</p> <p>6 Q. If you do have it, have your counsel produce</p> <p>7 it, please.</p> <p>8 A. Yeah. Fine. I told them just to keep</p> <p>9 everything. I didn't tell them that specific file. I</p> <p>10 said just keep our entire backup, if you can.</p> <p>11 Q. Okay. I'm going to change focus for a little</p> <p>12 while now. And I want to talk a little bit about</p> <p>13 Power's current or anticipated business operations. So</p> <p>14 just to give you a context --</p> <p>15 A. Yep.</p> <p>16 Q. -- I'm letting you know that. And just</p> <p>17 because of something you said right at the beginning,</p> <p>18 if -- if -- if at any point you're testifying in your</p> <p>19 individual capacity as opposed to as a corporate</p> <p>20 designee and you feel like that distinction's important,</p> <p>21 let me know.</p> <p>22 A. Okay.</p> <p>23 Q. Otherwise I'm going to assume you're</p> <p>24 testifying as a corporate designee and also to your</p> <p>25 personal --</p> <p style="text-align: right;">Page 159</p>
<p>1 had happened several months before this deposition?</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 A. Also one thing just to note, although</p> <p>5 unfortunately, if you noted even -- I think I copied you</p> <p>6 as far as attempts that file. Even after it wasn't</p> <p>7 copied, I requested for the other company to keep it and</p> <p>8 I sent them an e-mail please keep it, but they didn't.</p> <p>9 So I made even an effort, an additional effort to tell</p> <p>10 them to try you to keep it. And -- yeah.</p> <p>11 Q. And did they not keep it because you weren't</p> <p>12 willing to pay for it?</p> <p>13 A. They just -- well, they didn't even respond.</p> <p>14 They -- so they just would never share it. And then</p> <p>15 when it came up that it wasn't there.</p> <p>16 Q. Was there any e-mail or document that you</p> <p>17 recall?</p> <p>18 A. Yeah. I had -- I think the e-mail -- well,</p> <p>19 you probably have the e-mail on that. But there was an</p> <p>20 e-mail to them saying please -- please keep it because,</p> <p>21 you know -- you know, just -- just keep it. We</p> <p>22 didn't -- we didn't want to lose it if we didn't have</p> <p>23 to, but....</p> <p>24 Q. So if you had instructed them to do it, it</p> <p>25 would be in your e-mail box?</p> <p style="text-align: right;">Page 158</p>	<p>1 A. Okay.</p> <p>2 Q. -- knowledge. All right?</p> <p>3 A. Sure.</p> <p>4 Q. Okay. Is -- is -- is Power Ventures have any</p> <p>5 anticipated business that it intends to do?</p> <p>6 A. Obviously we're in a state right now in a -- I</p> <p>7 guess you can call it a waiting state. You know, we --</p> <p>8 our business was, you know -- was every -- most -- a lot</p> <p>9 of the business right now is -- it's in flux. I mean,</p> <p>10 the goal and hope, I mean, there would be naturally</p> <p>11 looking and exploring opportunities. But there's no</p> <p>12 direct, like, operation right now.</p> <p>13 Q. Is there -- so when you say the goal and the</p> <p>14 hope, what -- what is that goal and hope as to what</p> <p>15 Power would do in the future?</p> <p>16 A. I think there's -- there's a lot of</p> <p>17 brainstorming, you know. I mean, I just -- I'm -- I'm</p> <p>18 talk -- I'm thinking about things and, you know, talking</p> <p>19 to people in the -- in the industry and just seeing --</p> <p>20 seeing, you know, what the best applications of our</p> <p>21 technology.</p> <p>22 Q. Does Power have any assets currently, money or</p> <p>23 otherwise? Other than the IP.</p> <p>24 A. Money, I mean, no. But the -- the IP, we have</p> <p>25 the IP. That's our primary value right now.</p> <p style="text-align: right;">Page 160</p>

<p>1 MR. CHATTERJEE: Okay. Let's mark this as the</p> <p>2 next exhibit.</p> <p>3 THE WITNESS: I mean, a better question is the</p> <p>4 debts exceed the -- the assets.</p> <p>5 MR. CHATTERJEE: And before we -- we -- we get</p> <p>6 -- this is going to be Exhibit No. 203.</p> <p>7 Q. Before we get to Exhibit No. 203, in the</p> <p>8 kind of brainstorming associated with the IP, originally</p> <p>9 I understand that one of the value propositions of Power</p> <p>10 was this ability to be -- to connect to multiple social</p> <p>11 networking web sites because the usage of those web</p> <p>12 sites differ greatly for many people that have multiple</p> <p>13 accounts. Would you agree with that?</p> <p>14 A. That was -- that was one. That was an app.</p> <p>15 So this thing, power.com was one app --</p> <p>16 Q. Right.</p> <p>17 A. -- using our platform. It was a -- it was a</p> <p>18 demonstration app.</p> <p>19 Q. Right. The browser.</p> <p>20 A. Well, the browser was another component. But</p> <p>21 the -- the browser was the plat -- yeah, that was a --</p> <p>22 the browser was a way to navigate inside this app. So</p> <p>23 our -- our view of Power -- power.com was a what we</p> <p>24 called a Power app. It was an app that, you know,</p> <p>25 allowed sites to interoperate with each other, allowed</p> <p style="text-align: right;">Page 161</p>	<p>1 out?</p> <p>2 A. I think it's just a matter of getting -- you</p> <p>3 know, the -- we need to have a clear thing to -- you</p> <p>4 know. And investors need to see something, you know.</p> <p>5 See -- it would -- it would have to make sense. I mean,</p> <p>6 we're like many ways took a step back.</p> <p>7 Q. What's the relationship between Serendipity</p> <p>8 and Power Ventures?</p> <p>9 A. Serendipity is a -- is a separate entity.</p> <p>10 That's just where I'm -- it's like exploring other</p> <p>11 projects and ideas.</p> <p>12 Q. Who controls the IP for Power today?</p> <p>13 A. Right now, I mean, it's -- the -- the series</p> <p>14 -- the series A shareholders and -- and myself. You</p> <p>15 know, those are the two kind of --</p> <p>16 Q. The owners of Power?</p> <p>17 A. The owners of Power.</p> <p>18 Q. Who are the other series A shareholders?</p> <p>19 A. So there were -- DFJ is still a shareholder in</p> <p>20 series A. They had participated in series A and series</p> <p>21 B. Sold off -- when we did -- which you're familiar</p> <p>22 with, that when we -- when we spun off, the spinoff, the</p> <p>23 series B left and we gave them the assets of one of</p> <p>24 the -- the company. And the series A shareholders</p> <p>25 essentially took over the series A together with my --</p> <p style="text-align: right;">Page 163</p>
<p>1 data to be accessed among many sites and allowed it to</p> <p>2 with the user as they went to different sites.</p> <p>3 Q. Given the way that the world and the market</p> <p>4 has developed --</p> <p>5 A. Yeah.</p> <p>6 Q. -- since that time, is that still -- that kind</p> <p>7 of ubiquity concept, is that still one of the -- the</p> <p>8 concepts that's within Power's goals or business models?</p> <p>9 A. You know, honestly, it's -- we have -- there's</p> <p>10 just so many possibilities right now, we're not -- it's</p> <p>11 like any company that -- there's -- everything's on the</p> <p>12 table.</p> <p>13 Q. So you don't know?</p> <p>14 A. Yeah, we don't have -- we don't have a</p> <p>15 specific plan or strat -- you know, that's like that's</p> <p>16 it. You know, we're evaluating like any company that</p> <p>17 goes through -- we went through a transitional stage</p> <p>18 obviously at the end of -- about a year ago. And then</p> <p>19 shutting -- shutting down the power.com site was another</p> <p>20 transitional stage. And then, you know, we've been --</p> <p>21 and that was about a year -- a year -- a little over a</p> <p>22 year, year and a half ago. And, you know, and there's</p> <p>23 been a -- kind of a -- a wait -- a waiting -- a waiting</p> <p>24 game right now.</p> <p>25 Q. Because you want to see how the lawsuit plays</p> <p style="text-align: right;">Page 162</p>	<p>1 with myself were the primary -- are the primary</p> <p>2 shareholders today. The series A included DFJ plus a</p> <p>3 range of other angels.</p> <p>4 Q. Okay. Did -- can you identify any specific</p> <p>5 angels?</p> <p>6 A. I mean, there's -- they're just -- they're not</p> <p>7 like any big name. I mean, Esther Dyson was in there,</p> <p>8 but that was probably the only name that --</p> <p>9 Q. The others are more or less friends and people</p> <p>10 you know?</p> <p>11 A. Not friends, but they were -- they were</p> <p>12 angels. But they're not angels that -- of, like, huge</p> <p>13 note that I think that are widely known or....</p> <p>14 MR. CHATTERJEE: Let's give Mr. Vachani</p> <p>15 Exhibit 203, please.</p> <p>16 (Plaintiff's Exhibit No. 203 marked for</p> <p>17 identification.)</p> <p>18 THE WITNESS: Okay.</p> <p>19 Q. BY MR. CHATTERJEE: So I have a foundational</p> <p>20 question before we get into the contents of this -- of</p> <p>21 this document. Who is Igor Barenboim,</p> <p>22 B-a-r-e-n-b-o-i-m?</p> <p>23 A. He's a shareholder, a series A shareholder.</p> <p>24 Q. Now, I notice that he appears to have a</p> <p>25 power.com e-mail address. Igor@power.com.</p> <p style="text-align: right;">Page 164</p>

<p>1 A. Yeah. We gave e-mail -- power.com e-mail</p> <p>2 addresses to most of our people because it was a nice</p> <p>3 name to include on -- this was giving Andreas a Power</p> <p>4 address.</p> <p>5 Q. And Eric Santos also had one?</p> <p>6 A. Yeah. Well, I -- at that time every -- we</p> <p>7 gave -- we gave Power addresses to almost anyone that</p> <p>8 was a shareholder. Some used it, some didn't.</p> <p>9 Q. So if I wanted to find an e-mail from Eric</p> <p>10 Santos to Rob Pollock where you weren't cc'd, where</p> <p>11 would I look to get that e-mail?</p> <p>12 A. Well, Rob -- Rob -- you'd have -- you'd have</p> <p>13 to ask Rob -- Rob Pollock, you know. I mean, it was --</p> <p>14 those -- those e-mails were all -- they were no -- there</p> <p>15 was no like -- at this -- for most of the stage of the</p> <p>16 company, it was the way that you have access to each</p> <p>17 other's e-mail boxes.</p> <p>18 Q. So there was no centralized e-mail repository?</p> <p>19 A. There wasn't.</p> <p>20 Q. Okay. And -- and was it basically a</p> <p>21 technology where someone could have a power.com e-mail</p> <p>22 address but it would forward --</p> <p>23 A. It was forward to their -- exactly.</p> <p>24 Q. Forward to a personal --</p> <p>25 A. Forwarded to --</p> <p style="text-align: right;">Page 165</p>	<p>1 connect to Yahoo! and send it, but it would come from</p> <p>2 Steve at Power, but it was basically still going through</p> <p>3 the Yahoo! So the -- everything was connected to --</p> <p>4 through Yahoo! to sent and received.</p> <p>5 Q. Now, as to all these different power.com --</p> <p>6 and was that the case even when the company was about</p> <p>7 100 people large?</p> <p>8 A. I think there were -- we -- we moved solutions</p> <p>9 many times. So we -- when we -- our servers switched so</p> <p>10 there was, like, a major change, like, three, four years</p> <p>11 ago. And there was a time right around November of 2008</p> <p>12 we had a major service switch. A lot of things were --</p> <p>13 were changed at that time. This is before we launched</p> <p>14 the Facebook thing.</p> <p>15 Q. And when -- when -- when that change occurred</p> <p>16 in roughly 2008 time frame, did that create a</p> <p>17 centralized e-mail server or not?</p> <p>18 A. No. It didn't. So we just --</p> <p>19 Q. So --</p> <p>20 A. We just switched server companies for our</p> <p>21 hosting.</p> <p>22 Q. And it would still just forward e-mails on,</p> <p>23 even with a hundred employees to their --</p> <p>24 A. Yeah, that's when we moved a bunch of things</p> <p>25 that were really expensive, you know, things that were</p> <p style="text-align: right;">Page 167</p>
<p>1 THE REPORTER: Okay. Let him finish, please.</p> <p>2 Q. BY MR. CHATTERJEE: And it would forward to a</p> <p>3 personal e-mail account?</p> <p>4 A. Yeah.</p> <p>5 Q. For everybody?</p> <p>6 A. Some people accessed -- everyone had different</p> <p>7 ways to access their Power. I mean, some people had</p> <p>8 their own servers. You know, everyone had their own --</p> <p>9 their own way of accessing their e-mail.</p> <p>10 Q. But there was no centralized place at Power</p> <p>11 where those e-mails were maintained?</p> <p>12 A. Not that I know of, I mean, that we -- that we</p> <p>13 utilized. I mean, I -- I know I personally utilized my</p> <p>14 e-mail through -- through the box that I gave you access</p> <p>15 to.</p> <p>16 Q. Right. But your e-mail address typically says</p> <p>17 steve@stevevachani.com and not power.com.</p> <p>18 A. Yahoo! makes it harder to do your from. A lot</p> <p>19 of the people use them. On their desktop they can --</p> <p>20 because, like, Google and some others make it easier to</p> <p>21 be able to put your e-mail there.</p> <p>22 Q. Okay.</p> <p>23 A. And I -- also I guess I had been using that so</p> <p>24 long, I just -- I -- I -- I think my BlackBerry, you</p> <p>25 know, it would -- it would send. But all the send would</p> <p style="text-align: right;">Page 166</p>	<p>1 not necessary as we....</p> <p>2 Q. So when this lawsuit was filed, did you e-mail</p> <p>3 the various power.com members and ask them to preserve</p> <p>4 documents?</p> <p>5 A. Did I e-mail? I mean, you have my e-mails,</p> <p>6 so. I mean, I don't -- I don't think there was a --</p> <p>7 there was no law -- there was no law -- there was a -- I</p> <p>8 mean, I -- I don't know what -- what -- what we said to</p> <p>9 them, but it would be -- it would be my -- everything is</p> <p>10 in my e-mail.</p> <p>11 Q. Do you recall ever instructing the power.com</p> <p>12 employees not to -- not to destroy documents?</p> <p>13 A. It's our standard policy no one -- not to</p> <p>14 destroy documents. No one's -- as far as I know, no</p> <p>15 one's -- no one's taken any direct effort to destroy</p> <p>16 documents.</p> <p>17 Q. Did -- but my question's really precise. When</p> <p>18 the litigation was filed did you send out a reminder or</p> <p>19 tell anyone not to destroy documents?</p> <p>20 A. Which? You mean the Facebook litigation?</p> <p>21 Q. Yeah.</p> <p>22 A. No, I didn't.</p> <p>23 Q. Okay. And was there any particular reason why</p> <p>24 you didn't do that?</p> <p>25 A. There was no -- it was just a standard --</p> <p style="text-align: right;">Page 168</p>

<p>1 standard litigation. It was not -- it was a threat</p> <p>2 actually. It was not even a -- you know, it was just</p> <p>3 a --</p> <p>4 Q. Okay.</p> <p>5 A. -- a claim. It was not like some major thing</p> <p>6 at that -- it was just one -- our -- it was not a part</p> <p>7 of our business at that time.</p> <p>8 Q. Okay.</p> <p>9 A. Obviously later on it --</p> <p>10 Q. What about when the lawsuit was filed, did you</p> <p>11 -- was there a particular reason why you didn't instruct</p> <p>12 people to keep documents that were relevant because of</p> <p>13 the fact that -- that the e-mails were going to their</p> <p>14 personal e-mail accounts and there was no central</p> <p>15 repository?</p> <p>16 A. No one asked us to. It was not something that</p> <p>17 we -- we had ever been through before.</p> <p>18 Q. Did you -- did you understand that -- that</p> <p>19 when a lawsuit is reasonably anticipated, a party has an</p> <p>20 obligation to take measures to preserve relevant</p> <p>21 documents?</p> <p>22 THE WITNESS: No one --</p> <p>23 MR. FISHER: Objection. Vague. Assumes facts</p> <p>24 not in evidence.</p> <p>25 THE WITNESS: As I said, I -- we -- whatever</p> <p style="text-align: right;">Page 169</p>	<p>1 forward to their personal address?</p> <p>2 A. No. I mean, there -- there was a server.</p> <p>3 But, I mean, I say everyone -- how they accessed it was</p> <p>4 in different ways.</p> <p>5 Q. Okay. But that server, would it house the</p> <p>6 e-mails that people received as part of the business or</p> <p>7 would it just forward things on?</p> <p>8 A. I -- I don't know how it was exactly work.</p> <p>9 But I believe that, you know, there was -- everyone had</p> <p>10 a different way of accessing their -- their e-mails.</p> <p>11 That's all I know. And all the people -- like I -- I</p> <p>12 accessed mine through Yahoo! and Eric would access</p> <p>13 through, you know, his own. Everybody accessed on their</p> <p>14 own.</p> <p>15 Q. So if that server did have e-mails between</p> <p>16 people at Power that didn't include you, that would be</p> <p>17 on the backup?</p> <p>18 A. I mean, yeah, it would be on the backup.</p> <p>19 Q. Okay. And if it isn't there, then --</p> <p>20 A. Yeah. Whatever -- whatever we have is in the</p> <p>21 backup.</p> <p>22 Q. Okay.</p> <p>23 A. I mean, I don't know the technical details on</p> <p>24 how these things were -- were working, so.</p> <p>25 Q. And if -- is it Power's view that an -- an</p> <p style="text-align: right;">Page 171</p>
<p>1 instructions were made, you have access to my e-mails.</p> <p>2 And you -- you've seen if there are anything -- no one</p> <p>3 has ever been instructed to destroy anything. And as</p> <p>4 far as I understand, everybody's, you know --</p> <p>5 Q. BY MR. CHATTERJEE: Right. My question's</p> <p>6 different. Not no one's been instructed to destroy.</p> <p>7 Were people instructed to make sure that they preserved?</p> <p>8 A. No one -- I don't believe anyone was</p> <p>9 instructed, you know, either way. But if there's an</p> <p>10 e-mail otherwise -- to the best of my recollection, no.</p> <p>11 Q. Was there a written corporate policy that</p> <p>12 employees were given as part of training or otherwise</p> <p>13 that said what you said earlier that people aren't</p> <p>14 supposed to get rid of documents or e-mails?</p> <p>15 A. We -- there was some corporate policies. And</p> <p>16 I don't know if those -- I don't know what -- what --</p> <p>17 what -- how formal they were. There were corporate</p> <p>18 policies when the -- when the company was in that stage.</p> <p>19 Q. Okay.</p> <p>20 A. But I don't know if there was something</p> <p>21 specific on that issue. No one -- none of us had ever</p> <p>22 been through -- I don't think anyone's ever discussed a</p> <p>23 lawsuit. The lawsuit had never been part of that.</p> <p>24 Q. I'm not sure I'll ask this question artfully.</p> <p>25 So people had a power.com e-mail address which would</p> <p style="text-align: right;">Page 170</p>	<p>1 e-mail sent to a power.com employee that was then</p> <p>2 forwarded to a personal account, who -- whose e-mail is</p> <p>3 that? Is that the employee's e-mail or is it Power's</p> <p>4 e-mail?</p> <p>5 MR. FISHER: Objection. Vague. Calls for a</p> <p>6 legal conclusion.</p> <p>7 Q. BY MR. CHATTERJEE: Do you follow me?</p> <p>8 A. Yeah.</p> <p>9 Q. I can give you a concrete example.</p> <p>10 A. Yeah.</p> <p>11 Q. If Eric Santos e-mailed Bruno Carvalho with</p> <p>12 some sort of business instruction --</p> <p>13 A. Yeah.</p> <p>14 Q. -- and it went to their personal e-mail --</p> <p>15 A. Yeah.</p> <p>16 Q. -- through the server architecture, who would</p> <p>17 be the owner of that e-mail?</p> <p>18 A. Well, I'll --</p> <p>19 MR. FISHER: Same objections.</p> <p>20 THE WITNESS: I'll answer it another way that</p> <p>21 -- more practically. That we were a small company. So</p> <p>22 if I look at the ten people that I personally</p> <p>23 communicated with most regularly and think about each of</p> <p>24 them, you know, I mean, from a practical standpoint --</p> <p>25 although this doesn't answer your question -- almost --</p> <p style="text-align: right;">Page 172</p>

<p>1 almost any e-mail, you know, there -- that all the 2 people that are involved in this situation have -- have 3 pretty much been -- you know, they're -- they're -- they 4 had -- they had their own solution. So I don't know who 5 own. I mean, we had -- if they had access. If they 6 chose to copy one person in Power, then obvious -- it's 7 accessible. And so that's from practical purposes 8 anything that was copied to me or anything that was 9 copied to Eric or -- or Rob or Zak or all these key 10 people that were in the company, you know, they were all 11 essentially preserved.</p> <p>12 Q. BY MR. CHATTERJEE: Right. But if -- let's -- 13 let's say that -- that there was an e-mail that went to 14 a person's personal e-mail account through the 15 forwarding tool on the servers and it had a bunch of 16 power.com business information, was the employee who 17 received that e-mail free to go and use that information 18 however they wanted outside of Power?</p> <p>19 MR. FISHER: Objection. Vague. Calls for a 20 legal conclusion. Incomplete hypothetical.</p> <p>21 THE WITNESS: In -- in theory, no. I mean, 22 they're not supposed -- they -- they -- when they sign, 23 when they join the company, they sign saying that 24 everything -- their -- their employment contracts, which 25 I believe you've seen some, you know, have references</p> <p style="text-align: right;">Page 173</p>	<p>1 Q. And when you say turning Facebook back on, 2 what do you mean?</p> <p>3 A. It means just turning back the same system 4 that was on for the month of December.</p> <p>5 Q. So that wouldn't be accessing through Facebook 6 Connect, it would --</p> <p>7 A. Facebook wouldn't allow us to access through 8 Connect. They denied us that opportunity. We tried -- 9 as you know, did launch through Facebook Connect and 10 Facebook turned it off without reason and basically 11 tried to tie the case to our usage of Facebook Connect 12 and basically would not allow us to use it, despite our 13 best efforts.</p> <p>14 Q. So in -- as of July 2009, Power was 15 considering reactivating the -- the technology to access 16 the Facebook web site that it employed in December?</p> <p>17 A. We were considering all options. Our -- as 18 you can see in our discussions, we were continuing to 19 try to figure out a way to use Facebook Connect. Rob 20 and other people were having conversations with 21 Facebook. But we had to keep running our business. And 22 if there -- was not going to allow us to -- to do that, 23 then we had to -- you know, we -- we had considered the 24 other option. Those were all on the table. We didn't 25 end up doing that, but it was definitely something we</p> <p style="text-align: right;">Page 175</p>
<p>1 to, you know, ownership and data and everything else 2 that they state. So there's a certain level of -- we're 3 probably not large enough to have implemented really 4 rigid, you know, well-defined systems at that level. 5 But, you know, we -- they were pretty -- the employment 6 contracts state, you know, we own -- we own all the 7 stuff. The standard stuff that are in most employment 8 contracts.</p> <p>9 Q. BY MR. CHATTERJEE: Okay. Let's go to Exhibit 10 2 -- 203. On the second page this is -- this is an 11 e-mail from you to a whole bunch of people that April 12 30th, 2009.</p> <p>13 A. Yep.</p> <p>14 Q. Do you see that?</p> <p>15 A. Yeah.</p> <p>16 Q. At the very bottom of the page there's number 17 5. It says "Our new US Launch scheduled in July."</p> <p>18 A. Yeah.</p> <p>19 Q. What -- what was the US-based launch going to 20 be?</p> <p>21 A. We had -- we had considered, you know, just 22 making -- starting to more -- to more aggressively push 23 our -- the Power site. And we had also talked about, 24 you know, potentially turning back -- Facebook back on, 25 which we decided not to do.</p> <p style="text-align: right;">Page 174</p>	<p>1 looked at, we kept as an option. In addition to 2 launching with Facebook Connect, had Facebook allowed us 3 to do that while still, you know, resolving these 4 differences, something we tried previously also.</p> <p>5 Q. If you turn to the following page in -- in the 6 section 9, you state "We have already built the new 7 Power.com using Facebook connect."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. What was the new power.com? How did it 11 differ?</p> <p>12 A. Well, in February as you -- as you -- in 13 February -- so to take you back on the history, just to 14 refresh our memories here and -- in December we had 15 extensive conversations with Facebook representatives 16 through -- and we had basically said that we were -- we 17 were willing to and we would like -- we would be happy 18 to try launching with Facebook Connect, this is how much 19 time we need. And then as we looked into it, we really 20 took it pretty seriously and worked throughout the month 21 of January. And we voluntarily took the site off on 22 January 2nd or 3rd and continued to work diligently to 23 build the Facebook Connect solution.</p> <p>24 And on -- and on I think it was, like, Feb -- 25 first week of February, I don't know the exact date, we</p> <p style="text-align: right;">Page 176</p>

<p>1 turned on the Facebook Connect. And it was actually 2 something we were -- we were really proud of internally, 3 because our guys accomplished a lot of things at that 4 time which we felt were really pushing -- you know, we 5 were able to get the -- the Power browser could work 6 with Facebook Connect. We had a lot of cool 7 functionality. It was missing a lot of key things, but 8 it was a step in the right direction. And as -- as you 9 see in our e-mails, we had hoped that we could go back 10 to Facebook and say, hey, look, this is what we've done, 11 let's keep a dialogue and let's try this. But obviously 12 those -- those conversations -- first they turned it off 13 and then second started to hold us, you know, hostage 14 against if you don't sign this or this or this we're not 15 going to let you run your business with Facebook 16 Connect.</p> <p>17 So that's when we say we had already built it, 18 we had already gone through that effort in February and 19 built that whole solution with Facebook Connect. So we 20 had hoped -- we had -- definitely were trying to -- to 21 turn back. We had hoped one of the options was we would 22 find some common ground and we could turn the Facebook 23 Connect solution that we had built back on and continue 24 building on that.</p> <p>25 Q. So when you were talking about the additional</p> <p style="text-align: right;">Page 177</p>	<p>1 There were a range of functionality with our Power 2 browser that were not possible, so we were able to build 3 much more -- much more vibrant applications inside of 4 sites that were not possible with standard platforms 5 where we could access five other sites. And it was -- 6 they were -- they -- these are the kind of things that 7 made us grow inside Orkut so large. We had built a wide 8 range of apps inside of Orkut, even without -- Orkut 9 didn't have an app platform, so Power had built Power 10 apps inside of Orkut.</p> <p>11 And so we -- we were looking -- there were a 12 range of really innovative apps that we wanted to turn 13 on that would be -- benefit Facebook users. And that 14 was kind -- that's what we were trying to discuss with 15 Facebook at that time is, hey, look, we -- let's figure 16 out ways to have -- have conversations. And so that -- 17 that was really -- we had a lot of -- lot of ideas on 18 cool apps for Facebook that were not possible. I'm not 19 thinking offhand right now, but they were -- our browser 20 was one for one example.</p> <p>21 At that time Facebook Connect, you know, was 22 very -- on other sites was very limited and integrations 23 with other sites. We were able to provide much more 24 robust integrations with other sites and put Facebook 25 features on other sites. So if a user and browser went</p> <p style="text-align: right;">Page 179</p>
<p>1 things that Facebook was asking, was that something 2 other than the Facebook Connect kind of developer 3 agreements and things like that?</p> <p>4 A. So -- so as you know, Power was -- one of the 5 key things of our technology was we were able to build 6 apps on top of Facebook with or without the Facebook 7 Connect platform. And we were able to build connections 8 to Facebook with or without Facebook Connect platform. 9 It was driven by user generated -- you know, users 10 providing access to that. And that was the core of our 11 technology. So for us, with whatever company we worked 12 with, we would always look at what was -- what was 13 available. If it was limited in users, one of the 14 features, we would add additional functionality. So in 15 the case of -- in the case of Facebook we basically -- 16 at that time we didn't know which direction, you know, 17 things would go and we had to keep moving forward with 18 our company. And....</p> <p>19 Q. Right. My question was a little different. 20 You had referred to a number of things that Facebook was 21 asking for that created obstacles on Facebook. The -- 22 the -- the kind of adoption of Facebook Connect. And 23 I'm -- I'm wondering what those things were.</p> <p>24 A. Well, I think -- I mean, at that time, I mean, 25 data -- data portability was one -- one functionality.</p> <p style="text-align: right;">Page 178</p>	<p>1 to another site, they could be using Facebook in ways 2 that were not yet available.</p> <p>3 Obviously Facebook has continued to evolve and 4 add new functionality. But even to this day there's 5 probably hundreds of cool things that we could offer 6 that were not -- because our technology had a different 7 -- it was just built differently. So....</p> <p>8 Q. Okay. So -- so let -- let -- let's start. 9 There was a lot in there. So I want to break it down a 10 little.</p> <p>11 A. Yeah. There was basically --</p> <p>12 Q. Hold on.</p> <p>13 A. Yeah.</p> <p>14 Q. Let me ask the question.</p> <p>15 A. Okay.</p> <p>16 Q. It's real important to let me ask the question 17 because --</p> <p>18 A. Please. Go ahead.</p> <p>19 Q. Okay. So you used the term integration.</p> <p>20 A. Yes.</p> <p>21 Q. Can you define that term for me?</p> <p>22 A. Yeah. So integration for us is when we -- 23 well, in the case of Facebook, it's -- it's the way that 24 the PowerScript and the Power browser and the other 25 Power other thing communicate with different sites. So</p> <p style="text-align: right;">Page 180</p>

<p>1 we -- we basically look how do we -- how -- the -- how 2 does -- how does the -- the Power browser and you talk 3 to other sites. How does the PowerScript talk to other 4 sites. This is what -- what I mean by integration. 5 Q. So when you -- when you're talking about 6 integration, the -- the issue as I understand what 7 you're saying with respect to the Power browser was that 8 Facebook didn't like the way that the PowerScript 9 applications interacted with the Facebook web site and 10 user data? 11 A. Actually, I don't -- I don't know. I can't 12 answer that. All I know is that what Facebook said, 13 which is they -- they didn't want any other way to 14 access the site except -- they don't want users to 15 access their data or connect with Facebook in any other 16 way except through Facebook Connect. 17 Q. Okay. And so -- 18 A. That's what -- that's what I know. 19 Q. That's very helpful. So -- and that was kind 20 of the show stopper for you? 21 A. Well, actually, no. The show stopper at that 22 time, we -- despite our strong -- you know, despite our 23 disagreement and we -- we -- we -- we -- we continued to 24 work with Facebook. We continually say you know what, 25 we're going to have to compromise a lot of great</p> <p style="text-align: right;">Page 181</p>	<p>1 again, which they had already done on us, you would -- 2 you would basically -- you're making a statement that 3 you'll -- you'll be -- you're essentially being 4 completely reliant on -- so this was -- you probably can 5 see all the discussions on this. But they wanted us to 6 sign a thing saying what we did was -- was wrong, which 7 obviously we -- we strongly believed that we had -- we 8 didn't do anything wrong in terms of, you know, what we 9 were doing. And they wanted us to also, you know, state 10 that our technology was -- was wrong and we were doing 11 something wrong in terms of giving users access to their 12 data. 13 And finally, when -- in relation to accessing 14 -- if -- if -- if Facebook had ever turned Facebook 15 Connect off on us for any reason, they said, well, you 16 know, you're going to sign things you'll -- that you'll 17 never be able to use your technology that you have 18 spent, you know, years, you know, building and 19 innovating and creating huge restrictions for us. Those 20 are some of the issues. I believe there were other 21 issues, too. 22 Q. Okay. 23 A. In the -- in the contract that they -- they 24 had insisted. 25 Q. Okay.</p> <p style="text-align: right;">Page 183</p>
<p>1 functionality for our users, but in the -- in the 2 best -- as, you know, as -- in the best interests of 3 trying to make this work, we turned it off on the 2nd, 4 we continued to work, and we say no, we're going to do 5 the best we can with Facebook Connect even though we're 6 going to reduce a lot of functionality. And then we'll 7 kind of see where it goes. And so actually we were 8 willing to and in fact we did -- we did cooperate. 9 Unfortunately, once we turned that on, they turned it 10 off on us and prohibited us from launching -- 11 Q. Right. 12 A. -- Facebook Connect. 13 Q. But you -- again, going back to your earlier 14 testimony, you said when Facebook was talking about 15 signing up with Facebook Connect, they were making a 16 number of other demands or requests about what Power 17 could or could not do. I'm just trying to figure out -- 18 A. Yeah. 19 Q. -- what are those things. 20 A. One of the things that Facebook asked, I 21 believe, was we want you to never -- we want you to 22 never be able to use your technology again that you -- 23 you know, with -- you know, completely close off the 24 possibility of ever being able to use your technology. 25 Even if -- even if we cut you off on Facebook Connect,</p> <p style="text-align: right;">Page 182</p>	<p>1 A. You can look back at all the dialogues on 2 that. 3 Q. So let me -- let me cast it in a slightly 4 different way. Power Ventures today, is it willing to 5 limit its access to the Facebook web site through 6 whatever channels Facebook authorizes? 7 A. I can't speak about that today. Today, I 8 mean -- 9 Q. Is the answer yes or no or I don't know? 10 A. I don't know. 11 Q. Okay. And why don't you know as the person 12 who oversees the ownership of -- 13 A. Because we don't have -- at this point our -- 14 our strategy for the future is not clearly defined and 15 there's too many variables. I mean, it really -- you 16 have to -- obviously you're familiar with the state 17 we're in right now and we're going through a 18 redefinition of our strategy. 19 Q. Okay. 20 A. This -- this e-mail was -- is several years 21 old. 22 Q. Right. We'll -- we'll -- we'll get to more 23 e-mails. But I just have a couple other small questions 24 about this one. In -- on April 30th, 2009, you sent an 25 e-mail in this chain -- it's on the first page -- where</p> <p style="text-align: right;">Page 184</p>

<p>25 //</p>	<p>1 there, but I want to bring up the sensitivity to --</p> <p>2 since you've had access to my personal e-mail box, you</p> <p>3 know, in a pretty deep way. And this is a -- a very</p> <p>4 sensitive issue, was a sensitive issue for me. And, you</p> <p>5 know, I just want to be -- want to bring that up and</p> <p>6 caution us to kind of be clear what's very sensitive</p> <p>7 with things that are not related to Power.</p> <p>8 MR. CHATTERJEE: Okay. Let's mark this as the</p> <p>9 next exhibit. I think we're on 207.</p> <p>10 (Plaintiff's Exhibit No. 207 marked for</p> <p>11 identification.)</p> <p>12 THE WITNESS: Go ahead.</p> <p>13 Q. BY MR. CHATTERJEE: Okay. Do you know what</p> <p>14 Exhibit 207 is?</p> <p>15 A. It looks like an employment contract offer to</p> <p>16 Eric.</p> <p>17 Q. So on October 8th, 2011, you had sent an</p> <p>18 employment contract from Serendipity Ventures Brasil,</p> <p>19 dash, OpenWeb to Eric Santos?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. Has he accepted employment to begin at</p> <p>22 any point in time with Serendipity Ventures or OpenWeb?</p> <p>23 A. We have not finalized any -- anything at this</p> <p>24 point. But I'm not even sure if that's relevant to</p> <p>25 this. But it's not something I have anything to hide</p> <p style="text-align: right;">Page 199</p>
<p>1 (Whereupon a break was taken from 2:28 to</p> <p>2 2:40.)</p> <p>3 THE VIDEOGRAPHER: This begins videotape</p> <p>4 number three in the continuing deposition of Power</p> <p>5 Ventures, Inc. The time is 2:40 p.m. on January 9th,</p> <p>6 2012, and we're back on the record.</p> <p>7 MR. FISHER: Neel, before you go on, can we</p> <p>8 designate the transcript just confidential pursuant to</p> <p>9 the protective order?</p> <p>10 MR. CHATTERJEE: That's fine.</p> <p>11 THE WITNESS: Yeah. I want to just also make</p> <p>12 a comment. Obviously I understand that you, you know,</p> <p>13 tried to focus this conversation on the specific</p> <p>14 elements of Power, but obviously a lot -- just like I</p> <p>15 have a lot of things going on in my personal life,</p> <p>16 sensitive, confidential projects, things that have</p> <p>17 nothing to do with Power and its involvement. I -- I</p> <p>18 realize there's crossovers at times and references and</p> <p>19 so you're -- both the strategies and everything</p> <p>20 discussed here are extremely confidential ideas. Plus</p> <p>21 everything else that's not related to -- you know, to</p> <p>22 Power and other investments, other things, I want to</p> <p>23 make sure that, you know, these are extremely</p> <p>24 confidential.</p> <p>25 I'm happy -- it's not like there's any secrets</p> <p style="text-align: right;">Page 198</p>	<p>1 though.</p> <p>2 Q. Are those negotiations still underway?</p> <p>3 A. I mean, we've -- we continue to have an open</p> <p>4 channel and conversations, but just we have not -- we</p> <p>5 have not completed anything.</p> <p>6 Q. Okay. If you can turn to the -- the second</p> <p>7 page of this e-mail. Or it might be the third page</p> <p>8 actually. Third page of this e-mail string.</p> <p>9 A. And by the way -- go ahead.</p> <p>10 Q. On July 8th, 2011, you sent an e-mail to Mr.</p> <p>11 Santos that I want to ask you some questions about. Do</p> <p>12 you see that? Very bottom.</p> <p>13 A. Yep.</p> <p>14 Q. One of the things you say at the very last</p> <p>15 sentence and continuing on to the next page is "Many of</p> <p>16 the things we wanted to do with Power, we will now be</p> <p>17 able to do inside Serendipity and of course, we will</p> <p>18 still build the next generation of Power."</p> <p>19 What did you mean when you made the reference</p> <p>20 to being able to do inside of Serendipity?</p> <p>21 A. I'm expecting to -- I definitely have interest</p> <p>22 to invest a large amount of money into Power as a -- not</p> <p>23 me, but me and other partners and investors. So I'm</p> <p>24 basically working with some venture groups right now.</p> <p>25 And my -- I'm basically lining up investment round once</p> <p style="text-align: right;">Page 200</p>

<p>1 we've kind of clarified our strategy to invest pretty 2 aggressively in bringing back whatever new applications 3 we decide. So that's part of the goal right now is to 4 -- you know, we're lining up investors. And one of 5 those investors would likely be Serendipity.</p> <p>6 Q. So my -- my question is really around the use 7 of the term inside Serendipity.</p> <p>8 A. It just means -- it's just saying that 9 Serendipity would be one of the investors in -- in this 10 new round if we close -- if we put together a new round 11 for -- for Power in the future.</p> <p>12 Q. So if you -- so -- this statement was meant to 13 mean that if you can line up investors for Power, 14 Serendipity would be an investor?</p> <p>15 A. Well, Serendipity is -- would be probably one 16 of the anchor investors. You know, that's one of -- our 17 intention is we've got a bunch of companies we're 18 vesting in, but this would be one of the companies that 19 we're definitely seriously evaluating to invest in.</p> <p>20 Q. And as far as the offer to Eric Santos, he was 21 going to have a role in both Serendipity and Power 22 Ventures, correct?</p> <p>23 A. Potentially, yeah, that would be correct. 24 I've -- I've, you know, offered him to participate with 25 our -- with our venture and to also contribute with</p> <p style="text-align: right;">Page 201</p>	<p>1 resources of an outside group have anything to do with 2 how --</p> <p>3 MR. FISHER: Can we go off the record?</p> <p>4 MR. CHATTERJEE: Yeah. Sure.</p> <p>5 THE VIDEOGRAPHER: We are going off the 6 record. The time is 2:46 p.m. 7 (Whereupon a break was taken from 2:46 to 8 2:51.)</p> <p>9 THE VIDEOGRAPHER: We are back on the record. 10 The time is 2:51 p.m.</p> <p>11 Q. BY MR. CHATTERJEE: Mr. Vachani, is 12 Serendipity ventures making any use of Power Ventures' 13 technology as part of its efforts?</p> <p>14 A. No.</p> <p>15 THE VIDEOGRAPHER: Your microphone, sir.</p> <p>16 THE WITNESS: Serendipity is not making use of 17 the technology, but Serendipity does have -- is a 18 shareholder in -- in Power.</p> <p>19 Q. BY MR. CHATTERJEE: Okay. What is -- without 20 going into the detail of who the other owners of 21 Serendipity may be, what percentage of ownership do you 22 have in Serendipity?</p> <p>23 A. It's a -- it's a -- it's a significant 24 ownership. It's not --</p> <p>25 Q. More than 75 percent?</p> <p style="text-align: right;">Page 203</p>
<p>1 Power.</p> <p>2 Q. And -- and I'm still struggling with the use 3 of the term inside. That sounds like it's something 4 that's part of Serendipity, not an investment.</p> <p>5 A. Well, Serendipity is an investor incubator, so 6 it's providing -- it's helping. It's providing, you 7 know, investment resources. So it would be -- we were 8 deaf -- we haven't made an investment yet, but we're 9 definitely evaluating an investment, especially looking 10 at, you know -- looking at the strategies and the plans 11 and the team and the people.</p> <p>12 Q. Other than you, does -- is there any other 13 person that -- that has invested in Serendipity?</p> <p>14 A. Yeah. Serendipity has many other people in 15 it.</p> <p>16 Q. How many?</p> <p>17 A. It's confidential. It has nothing to do with 18 Power.</p> <p>19 Q. How many?</p> <p>20 A. Serendipity's -- I believe is completely -- 21 it's confidential.</p> <p>22 Q. We're under seal. It's confidential.</p> <p>23 A. I understand that but --</p> <p>24 Q. How many?</p> <p>25 A. Again, I don't see any reason why the</p> <p style="text-align: right;">Page 202</p>	<p>1 A. It's more than 50.</p> <p>2 Q. Okay. Somewhere between 50 and 60?</p> <p>3 A. Again, I don't -- I don't know if that's 4 relevant, the numbers. And they're -- they're changing, 5 but...</p> <p>6 Q. Give me an estimate.</p> <p>7 A. It's above 50. I mean, it's I guess I don't 8 --</p> <p>9 Q. Are any of the investors in Serendipity the 10 same as investors in Power Ventures other than you?</p> <p>11 A. At this point, no.</p> <p>12 Q. Why would you offer Mr. Santos an employment 13 contract where he'd be employed by both Serendipity 14 Ventures and OpenWeb?</p> <p>15 A. Because Eric obviously has played -- played a 16 crucial role in building the Power technology. And if 17 Serendipity is going to invest, I'd like to see, you 18 know, him apply his experience and knowledge there. But 19 we also believe Eric's -- knowing Eric and having worked 20 with him for many years and believe that he has much 21 greater potential and capacity and would like to see him 22 also contribute to both -- you know, to both -- both 23 entities.</p> <p>24 MR. CHATTERJEE: Let's mark this as Exhibit 25 208.</p> <p style="text-align: right;">Page 204</p>

<p>1 (Plaintiff's Exhibit No. 208 marked for 2 identification.)</p> <p>3 Q. BY MR. CHATTERJEE: Mr. Vachani, what I've 4 handed you marked Exhibit 208 is an employment agreement 5 between Serendipity Ventures Brasil and I believe Eric 6 Santos. Is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And Serendipity Ventures Brasil was offering 9 Mr. Santos both the position as CTO of Serendipity 10 Ventures and as president and chief operating officer of 11 OpenWeb and PowerWeb Technologies.</p> <p>12 A. Correct.</p> <p>13 Q. And is OpenWeb, slash, PowerWeb Technologies 14 the same thing as Power Ventures?</p> <p>15 A. Right now that's a -- that's -- that's -- that 16 is the company that we -- we haven't created this 17 company. But in the future we -- we intend to, you 18 know, consolidate, you know, everything in a -- in a 19 company like called PowerWeb Technologies.</p> <p>20 Q. And so when you -- when you wrote -- did you 21 -- did you authorize this document to be sent to Mr. 22 Santos?</p> <p>23 A. I did.</p> <p>24 Q. And when you wrote OpenWeb, slash, PowerWeb 25 Technologies, was it your intention to be referring to</p> <p style="text-align: right;">Page 205</p>	<p>1 2011 --</p> <p>2 A. Yep.</p> <p>3 Q. -- you were offering him a position in a 4 company that did not yet exist?</p> <p>5 A. Correct.</p> <p>6 Q. And --</p> <p>7 A. Well, it's a --</p> <p>8 Q. But -- hold on. But he was going to be an 9 employee of Serendipity Ventures Brasil?</p> <p>10 A. He would -- well, PowerWeb would exist when he 11 -- I mean, it exists. It doesn't have any assets right 12 now. But the intention in the future is if -- is to 13 bring Serendipity -- sorry -- to bring Power Ventures 14 from a Cayman company to become a US company and to 15 consolidate its -- you know, its technology. That's -- 16 that's the -- that's the current -- current plan.</p> <p>17 Q. And he would be -- he would be an employee of 18 Serendipity Ventures Brasil even though he had these 19 titles of this other company?</p> <p>20 A. Well, he would be working for both. He would 21 be working for both companies. And both companies would 22 contribute to, you know, his payment until -- until --</p> <p>23 Q. Who would he have the employment relationship 24 with?</p> <p>25 A. The employment relationship -- well, he would</p> <p style="text-align: right;">Page 207</p>
<p>1 Power --</p> <p>2 A. Yeah.</p> <p>3 Q. -- Ventures?</p> <p>4 A. My intention is to -- to -- we're going to -- 5 in the future -- obviously this is all speculation. 6 None of this has happened. It's been conversations that 7 we hope to happen. But our hope is to find -- to find a 8 way to consolidate the technology into a company that we 9 can, you know, build other applications and that we want 10 to get Eric to at least play a role at least in the 11 early stage to help -- help with that.</p> <p>12 MR. FISHER: Can you read the question back, 13 please.</p> <p>14 (Whereupon the record was read as requested.)</p> <p>15 THE WITNESS: No, it wasn't -- it's not 16 intended to be. Because Power Ventures at this point we 17 see that they're the future. You know, we've -- we've 18 -- we've looked at the possibility of bringing the 19 company to the US. As you know, the company is a Cayman 20 company. And if we were to bring the company to the US, 21 this would be the name of the company that we were -- 22 OpenWeb or PowerWeb Technologies still. Which is why we 23 haven't -- haven't decided on a final name.</p> <p>24 Q. BY MR. CHATTERJEE: Okay. So when you sent 25 this offer letter to Mr. Santos on or about October 8th,</p> <p style="text-align: right;">Page 206</p>	<p>1 -- in Power he would be reporting to me. And in 2 Serendipity, you know, that's -- he would be working -- 3 same -- the same thing. At this point -- this is -- 4 this is also contingent that Serendipity has a strong 5 interest to invest in Power.</p> <p>6 Q. Who would pay him?</p> <p>7 A. That hasn't been determined yet, but it would 8 be both. Probably -- probably -- probably would be 9 Power. Power. Serendipity would probably pay -- you 10 know, probably would go together with an investment in 11 the company.</p> <p>12 Q. So it wouldn't be Serendipity that would be 13 paying him if he has his employment obligations to?</p> <p>14 A. At this point because of the fact that we -- 15 this is all too -- there's nothing been finalized. We 16 left it open. This is a detail that has not been 17 finalized.</p> <p>18 Q. So if you look at this, it says "On behalf of 19 SERENDIPITY VENTURES BRASIL," "a Delaware limited 20 liability company --</p> <p>21 A. Yes.</p> <p>22 Q. -- (the 'Company')." 23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you understand that the way this is drafted</p> <p style="text-align: right;">Page 208</p>

<p>1 is that phrase company is referring to Serendipity</p> <p>2 Ventures Brasil?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. If you turn to the second page wherein</p> <p>5 section 2(a) Salary.</p> <p>6 A. Yep.</p> <p>7 Q. It says, "The Company shall pay you as</p> <p>8 compensation for your services an initial monthly salary</p> <p>9 at a gross rate of" US 11,000.</p> <p>10 A. Okay.</p> <p>11 Q. Do you see that?</p> <p>12 A. Yep.</p> <p>13 Q. Is it fair to say that this offer that was</p> <p>14 sent to Mr. Santos had Serendipity Ventures Brasil, LLC</p> <p>15 paying Mr. Santos \$11,000 to be -- to have these various</p> <p>16 roles in this agreement?</p> <p>17 A. Again, I said -- said that the intention is</p> <p>18 for Serendipity to -- to -- to invest and take a greater</p> <p>19 role. Because these things are -- you know, it's a</p> <p>20 startup, very early stage, and both companies</p> <p>21 specifically --</p> <p>22 Q. Would you agree with my reading of what I just</p> <p>23 led you through?</p> <p>24 A. Would I agree with your reading that?</p> <p>25 Q. Serendipity Ventures is the one on the hook</p> <p style="text-align: right;">Page 209</p>	<p>1 (Plaintiff's Exhibit No. 209 marked for</p> <p>2 identification.)</p> <p>3 THE WITNESS: Okay.</p> <p>4 Q. BY MR. CHATTERJEE: Who is Chris Matchett?</p> <p>5 A. He was an early, very early investor in the</p> <p>6 series A.</p> <p>7 Q. Was he on the board of directors?</p> <p>8 A. He was in the early pre up until -- in the</p> <p>9 early days, yeah.</p> <p>10 Q. Until about November --</p> <p>11 A. Until November.</p> <p>12 Q. 2008?</p> <p>13 A. Yeah.</p> <p>14 Q. And who's Tara Newell?</p> <p>15 A. Tara Newell? Where is?</p> <p>16 Q. She's cc'd.</p> <p>17 A. I don't know. I'm assuming that's someone</p> <p>18 that he cc'd. I assume it's someone that's on his legal</p> <p>19 -- his legal side.</p> <p>20 Q. Did -- so Mr. Matchett sent this e-mail</p> <p>21 resigning from the board of directors of Power Ventures</p> <p>22 Did anyone ever talk him out of it?</p> <p>23 A. No.</p> <p>24 Q. So -- so he resigned?</p> <p>25 A. He resigned, yeah.</p> <p style="text-align: right;">Page 211</p>
<p>1 for paying him under this agreement.</p> <p>2 A. I guess it would -- Serendipity, that would be</p> <p>3 the correct. But...</p> <p>4 Q. Okay. Thank you.</p> <p>5 A. Actually, again, I -- I -- I want to correct</p> <p>6 that. They would be on the hook would be both</p> <p>7 companies. But, you know, both companies are -- would</p> <p>8 be employing him. But Serendipity Ventures is the</p> <p>9 company that's right now the entity that's --</p> <p>10 Q. Where in this agreement does it say that</p> <p>11 anyone other than Serendipity Ventures Brasil would have</p> <p>12 to pay Mr. Santos' salary?</p> <p>13 A. Again, this is -- this is a -- this is not a</p> <p>14 signed agreement. This is -- this is a theoretical</p> <p>15 agreement and a structure that has not been formally</p> <p>16 defined and has not even gone through, you know, the --</p> <p>17 the lawyers to -- you know, to clean it up yet. So it's</p> <p>18 a hypothetical agreement that until we figure out --</p> <p>19 until we figure out the proper structure, the proper</p> <p>20 role, the proper terms, there is -- it's all</p> <p>21 hypothetical. So I don't -- I don't -- I mean, I --</p> <p>22 that's -- again, I -- I -- I don't know what the final</p> <p>23 structure is going to be. We're still evaluating that.</p> <p>24 MR. CHATTERJEE: Okay. Let's mark this as</p> <p>25 Exhibit 209.</p> <p style="text-align: right;">Page 210</p>	<p>1 Q. Okay.</p> <p>2 A. He was an early -- early investor and didn't</p> <p>3 really affect the company in any way.</p> <p>4 Q. Okay. So in the e-mail on top there's a -- a</p> <p>5 reference -- one, two, three, four -- on the fifth</p> <p>6 paragraph down from Mr. Olson where he says "Perhaps</p> <p>7 am wrong, but I believe" we'll "have a good idea whether</p> <p>8 the company will survive two or three weeks after the</p> <p>9 December 1st guerilla launch...."</p> <p>10 A. Yep.</p> <p>11 Q. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any idea what he was referring to</p> <p>14 when he refers to the guerilla launch?</p> <p>15 A. Yeah. He's referring to -- that's -- that's</p> <p>16 the date that power.com formally launched as a company.</p> <p>17 I mean publicly. You see all the press releases. And</p> <p>18 that's where we made our first introduction of power.com</p> <p>19 with media, press, etcetera, and introduced some of our</p> <p>20 core for the power.com application. So it was referring</p> <p>21 to the -- the December 1st launch that we -- that was</p> <p>22 well documented in the media.</p> <p>23 Q. So when -- when he says "...I believe" "we</p> <p>24 will have a good idea whether the company will survive</p> <p>25 two or three weeks after the December 1st guerilla</p> <p style="text-align: right;">Page 212</p>

<p>1 launch..." it really is a matter of how much attention 2 and usage Power is getting? Is that -- 3 A. Well, I think it was just -- the point is 4 that, as you know, 2008, that was a very difficult time 5 for -- investors were all trying to figure out if they 6 were willing to -- they were all under their own issues 7 and challenges internally. And many -- many, you know, 8 were trying to make their decisions on how to invest 9 their money in 2008. Obviously it was a -- for many 10 investors, they put a freeze on investment. And this 11 was just a -- I think a conversation. He was basically 12 just saying, look, let's -- let's see how things 13 continue to go. 14 Q. Okay. Now, in this e-mail it refers to a 15 third resignation by the only remaining independent 16 board member. I take it from that that Mr. Matchett was 17 the second resignation? 18 A. Andreas and Chris I think resigned at the same 19 time. 20 Q. They both resigned from the board? 21 A. Yeah. 22 Q. In November? 23 A. And Simon was -- Simon -- Simon and -- Simon 24 and Andreas were both DFJ board members. And so Simon 25 stayed on and -- and Andreas -- Andreas and Chris</p> <p style="text-align: right;">Page 213</p>	<p>1 you know, this is going to be a tough time, this next 2 year, and you're going to need to -- you've got Simon 3 there, but it's probably better that, you know, you work 4 with Simon. And you can -- and you -- let you make the 5 decisions that you feel are best for the company. That 6 was -- that was when I started this turn where Andreas 7 left. There were two board members from DFJ. We 8 reduced it to one. 9 Q. And originally DFJ had two. Was that as part 10 of the terms of the investment or -- 11 A. No. They -- well, we had the -- they had the 12 right -- there were two -- we had two -- two investors 13 from -- from DF -- from DFJ. But it was only -- we had 14 done that -- we -- it was only one that was actually 15 the -- the right to. But we had two. And so he left. 16 Basically Simon was more involved with the company and 17 Simon was much more actively involved and also more -- 18 was closer to the office. So they felt that -- at that 19 point Simon's -- Simon felt it would be best for him to 20 be the -- the DFJ board member that was most directly 21 involved. And that's -- and then at that point that's 22 when I started to seek out new -- new partners, brought 23 in -- brought in other people to the company. 24 Q. Did there ever come a time when the entire 25 board resigned other than you?</p> <p style="text-align: right;">Page 215</p>
<p>1 resigned to leave room for new people. So Simon was 2 going to take a greater role at that time and Andreas 3 was going to take a lesser role. 4 Q. Okay. So you just stated that they left to 5 make room for more people. 6 A. Well -- 7 Q. Mr. Matchett did not leave for that reason. 8 A. No. Mr. Matchett left -- well, he made room. 9 He left the company -- his disagreed -- we had 10 disagreements. And so we obviously were intending to 11 bring new people on that can -- 12 Q. Right. But his reason was not to leave the 13 board to make room for more people. That's what the 14 e-mail says, correct? 15 A. Well, he -- we -- I was already -- it was we. 16 But we were making room. He was an early investor that 17 he didn't share the same opinions and so we wanted to 18 bring new fresh -- fresh voices and faces on. 19 Q. But he didn't say he was leaving -- 20 A. No, he didn't say he was leaving for that 21 reason, that's correct. 22 Q. Did Mr. Stavropoulos say the reason he was 23 leaving the board was to make room for other people? 24 A. Well, his -- his -- his -- Mr. Stavropoulos 25 left because he said that I believe that you need to --</p> <p style="text-align: right;">Page 214</p>	<p>1 A. Well, no. Simon was on -- Simon was always on 2 the board. 3 Q. Did there ever come a time when the entire 4 board resigned? 5 A. When the entire board? 6 Q. From Power Ventures. 7 A. Well, I think when we -- when we did the 8 spinoff of the company in 2009 or -- or -- no. What, 9 two thousand -- August -- August -- I guess it was 2009 10 when we -- 11 Q. When you refer to spinoff, what do you mean? 12 A. When we had Cart Up and power.com split up. 13 And we basically made a deal with the series B investors 14 that they would -- that we would give them those assets 15 and we would maintain -- Power Ventures would maintain 16 the core power.com assets. And at that point those -- 17 the series B investors, those people basically dissolved 18 all ownership into power.com and took ownership of -- of 19 another technology we had built that was completely 20 inside of Power called Cart Up. 21 Q. Okay. Does Power Ventures have board members 22 today? 23 A. Today Power Ventures has only -- I'm the only 24 board member of Power Ventures. 25 Q. Okay. And is it your testimony as you sit</p> <p style="text-align: right;">Page 216</p>

<p>1 here today that all of the other board members who left 2 since December of 2008 left because of the spinoff of 3 Cart Up? 4 A. No. That was -- that was two years, almost a 5 year and a half later. So in two thousand -- in 2008 we 6 had Simon and myself -- we had -- we had a three man -- 7 we had -- we had a board of Simon, myself, Andreas, and 8 Chris. Chris was something that, you know, we 9 actually -- at that point know -- you know, most people 10 felt was kind of dead weight for the company. And there 11 was difference of opinion. He was -- so he was -- he 12 left. With DFJ we -- we basically -- 13 Q. When you say "opinion of the company," who 14 other than you? 15 A. I think everybody in the company had -- had an 16 opinion of Chris that was -- you know, he had a lot of 17 conflict with a lot of DFJ early -- early -- with people 18 earlier. But again, that -- this is subjective 19 opinions. 20 Q. Okay. 21 A. I don't know. 22 Q. So -- so as of December 1, 2008, Chris 23 Matchett was no longer a board member, correct? 24 A. That's correct. 25 Q. And Andreas Stavropoulos was no longer a board</p> <p style="text-align: right;">Page 217</p>	<p>1 Up technology. We made a deal that they would take -- 2 they would take -- they would spin off their -- their 3 own -- they would give up their ownership in the company 4 in the series B. So series A stayed intact and -- 5 and -- and said -- were given -- were given an 6 opportunity to either -- the series A investors were 7 given an option to either take Cart Up shares or take 8 Power. And the series A decided to stay with Power and 9 the series B decided to -- to give up everything and 10 take the -- take the ownership in Cart Up. 11 Q. Okay. So Rob Pollock, Neil Azous, and Omar 12 Amanat -- 13 A. Yes. 14 Q. -- joined the board after December 1, 2008? 15 A. Correct. 16 Q. And anyone else join the board after December 17 1, 2008? 18 A. Let me just think. So -- so as far as I can 19 remember substantially, there were no board -- there 20 were discussions of people to join the board, but none 21 of those -- had, like, things go around where we had 22 people that were going to be on the board, but those 23 were never -- you know, they were -- they were never 24 formalized in the minutes. 25 MR. CHATTERJEE: Let's mark --</p> <p style="text-align: right;">Page 219</p>
<p>1 member? 2 A. That's correct. 3 Q. Okay. Other than those two people, who are 4 the people that comprised the board of Power Ventures? 5 A. Myself and Simon Olson. 6 Q. Okay. Esther Dyson was no longer involved? 7 A. She -- she was never a board member. She just 8 had a small -- a very small investment in the company. 9 She was -- she was never a board member. 10 Q. Did Rob Pollock ever have a board position? 11 A. Yes. Later on he joined the board. 12 Q. Anyone else other than him join the board? 13 A. Let me see. Yeah. Later -- later on we had 14 Neil -- Neil Azous and Omar Amanat were different people 15 that were on the -- Omar A-m-a-n-a-t. Those were people 16 that also had roles on the board. 17 Q. Okay. 18 A. They were part of a series B investment that 19 we raised -- that we raised the following year. 20 Q. And did Omar Amanat and Neil Azous join the 21 board of Cart Up after the spinoff? 22 A. I don't know what they did with Cart Up. But 23 they were part -- when we -- we made a deal where we 24 basically -- we -- we had -- you know, we had no 25 interest in -- you know, I had no interest in the Cart</p> <p style="text-align: right;">Page 218</p>	<p>1 THE WITNESS: When I say the board, just to be 2 clear, it means minutes that were formalized in Cayman 3 Islands. 4 MR. CHATTERJEE: Let's mark this as Exhibit 5 210. 6 (Plaintiff's Exhibit No. 210 marked for 7 identification.) 8 THE WITNESS: One last thing. I don't know at 9 the end -- because I was not with the company, you know, 10 when -- when -- the last two months. I don't know if 11 Zak was technically on the board for a few weeks or not. 12 But I don't think he was. 13 Q. BY MR. CHATTERJEE: Okay. So what I've handed 14 you is an e-mail string between Rob Pollock, yourself, 15 Michael Ross, and Zak Mandhro. Mr. Ross was never a 16 board member of Power Ventures? 17 A. As far as I can remember, I don't believe he 18 was ever a board member. He was just a shareholder. 19 Q. In this e-mail Mr. Pollock says, "Obviously," 20 the "events surrounding Omar eclipsed Esther, however 21 she made it very clear that she wishes no further 22 association with Power due to the suit." 23 A. Uh-huh. 24 Q. So do you know what events surrounding Omar 25 Mr. Pollock is referring to in this e-mail?</p> <p style="text-align: right;">Page 220</p>

<p>1 A. Yeah. He's referring to investment. We 2 were -- we were -- we were in the final days of closing 3 an investment that was much needed at that time with 4 Neel, DFJ, and Omar. And so Omar -- and Omar was 5 playing an active role in that. So the investment 6 was -- was what he was referring to, the series B 7 investment.</p> <p>8 Q. Okay. And -- and did you ever talk to Esther 9 Dyson about this lawsuit?</p> <p>10 A. Yeah. We had many conversations. She had in 11 the early days tried to, you know, offer, you know, 12 her -- her help. She -- it was a very sensitive issue 13 for her because she's -- she has a relationship with -- 14 with everybody. And she didn't really want to be caught 15 in the middle of any kind of lawsuit on any side. And 16 so she made it clear that she -- beyond, you know, 17 giving some advice, she really didn't want to be -- you 18 know, she's a -- she's a -- as an industry insider and 19 has a relationship with Facebook, has a relationship 20 with many other companies, and she only had a small, 21 very small investment in this -- in Power, \$100,000. 22 That, you know, it was -- it was -- it was not important 23 to her. She would rather even give up her -- her 24 investment to not have to be, you know, associated. So 25 she never -- beyond a few conversations she's -- I think</p> <p style="text-align: right;">Page 221</p>	<p>1 -- she was less about Power. She didn't really 2 personally want to be involved in this lawsuit. And so 3 that was her -- her opinion, is that if I'm -- you know, 4 if I'm there, just -- I really don't want to be 5 associated with this lawsuit.</p> <p>6 Q. Make it go away?</p> <p>7 A. She said it was -- yeah, she -- make it go 8 away or at least don't get me involved in it. Because, 9 you know, as I said, she's a very -- she's a neutral 10 person in the industry and she didn't want to be 11 associated with that.</p> <p>12 MR. CHATTERJEE: 211. 13 (Plaintiff's Exhibit No. 211 marked for 14 identification.)</p> <p>15 MR. FISHER: Two documents, Neel?</p> <p>16 MR. CHATTERJEE: Yes. It's two -- two -- two 17 different documents. But let's use them as one.</p> <p>18 Q. BY MR. CHATTERJEE: Mr. Vachani, after you've 19 looked at this, let me know what these -- these 20 documents are. It's Exhibit 210 -- or 211.</p> <p>21 A. I have 211. Did you give me -- 210 is the one 22 with Esther?</p> <p>23 Q. Yeah. 211, I mean.</p> <p>24 A. Yeah, 211. Okay. I'm looking at it. You 25 want to talk about that?</p> <p style="text-align: right;">Page 223</p>
<p>1 she made an introduction to someone at -- back at the 2 December 30th, she -- of -- when the -- the month of the 3 lawsuit was starting, I think she had -- she had 4 expressed that, you know, she would like -- she would 5 like to see -- in her opinion she would like to see it 6 resolved easily. But as she's not a major shareholder, 7 a board member, advisor, or had no substantial interest 8 in the company -- company, you know, her opinion was 9 noted.</p> <p>10 But obviously, you know -- and we -- and we 11 did make efforts at her request to try to have 12 conversations with Facebook. And in some ways in the 13 early days she did help, you know, as we -- you know, 14 her opinion was valued. But later on she kept -- she 15 kept out of it.</p> <p>16 Q. So there's a statement in here by Mr. Pollock. 17 Says "...she's not going to hesitate to make it 18 perfectly clear how she feels about Power's lawsuit." 19 Do you see that?</p> <p>20 A. Yep.</p> <p>21 Q. Do you have any understanding as to what he 22 meant when he said that?</p> <p>23 A. I think in her opinion was find a way to 24 settle it. So she -- she really didn't want us to be -- 25 you know, she didn't really want -- you know, Power or</p> <p style="text-align: right;">Page 222</p>	<p>1 Q. Yeah. So there's a first one talks about 2 "Power.Com is a free service..." and the second document 3 is entitled "Changes in system conditions and Terms of 4 Use."</p> <p>5 A. I don't have that one. Oh, it's on the same 6 document. Yeah. Okay. Sorry. I do have that.</p> <p>7 Q. So if you go to the -- did you -- were you 8 involved in the drafting of this document?</p> <p>9 A. I didn't write it, but I -- I obviously -- 10 I -- I'm pretty sure I read it and saw it. You know, I 11 was usually copied on these things. And I don't 12 remember -- I don't think I had --</p> <p>13 Q. So if you go -- if you go to the second page 14 there's a section entitled "Content and Use Policy"?</p> <p>15 A. Yep.</p> <p>16 Q. There's a section in the start of the second 17 paragraph that says "The use of Power.Com is forbidden 18 for any illegal or non-authorized purposes."</p> <p>19 A. Yep.</p> <p>20 Q. "You (the user) are the only one responsible 21 for your conduct and use of services, including all 22 content posted by you..." and listed a bunch of things.</p> <p>23 A. Yep.</p> <p>24 Q. And then it says "Any violation in the Terms 25 of Use of third-party sites, as well as any damage</p> <p style="text-align: right;">Page 224</p>

<p>1 caused to third" party sites "through using Power tools, 2 will be the sole responsibility of the user." Do you 3 see that? 4 A. Yes. 5 Q. Do you know why that provision was -- was 6 added to the terms of use? 7 A. I do not. But it looks like a pretty standard 8 term though. 9 Q. And there's also a statement that says 10 "Power.Com may, at any moment and with no obligation on 11 Power.Com's part, block access to any user whose conduct 12 we determine to be illegal, threatening, defamatory, 13 obscene, fraudulent or break these terms of use or 14 violate the intellectual property of third parties." 15 A. Uh-huh. 16 Q. Do you see that? 17 A. Yes. 18 Q. Do -- do you understand that to mean that 19 Power could disable the user's ability to access data 20 that they stored on the Power web site for any of those 21 reasons that are listed? 22 A. Correct. 23 MR. FISHER: Objection. Vague. Calls for a 24 legal conclusion. The document speaks for itself. Go 25 ahead.</p> <p style="text-align: right;">Page 225</p>	<p>1 Q. Do you know why that section was added to 2 terms of service? 3 A. No. It's lawyers obviously had -- lawyers put 4 it in there. 5 Q. Was Power concerned at all that third parties 6 like Facebook might assert claims based upon its 7 business model and was trying to put the obligation on 8 its users instead of taking it on themselves? 9 A. No, that was not -- I don't believe that was 10 the intention. 11 Q. Okay. And the next -- 12 A. I believe it was a standard -- standard legal 13 clause that, you know, just -- you know, typically in 14 terms and conditions are very far reaching and -- and 15 very thorough and explicit, which is true to many terms 16 and conditions. 17 Q. Going back to the paragraph that I read you 18 from the second page about any violation of terms of 19 use, is that also this kind of standard provision that 20 you're talking about? 21 A. Yeah. We trusted our lawyers on this, on this 22 document. 23 Q. So your testimony is the lawyers told you it 24 was a standard provision? 25 MR. FISHER: Objection. Argumentative.</p> <p style="text-align: right;">Page 227</p>
<p>1 THE WITNESS: Power -- of course. Most sites, 2 I think, we -- we maintain the right to cancel accounts 3 for users that we felt -- 4 Q. BY MR. CHATTERJEE: So the user would not -- 5 A. -- was involved in some kind of, you know, 6 illegal activity. 7 Q. So if someone broke the terms of use that 8 Power had with them, Power reserved the right to disable 9 the data portability of the data stored on Power's web 10 site, correct? 11 A. Power reserves -- always has the right, yeah. 12 Q. Okay. Go to the -- the last -- the second to 13 last page, there's a section "Exemption of 14 responsibility." If you can, read the first and second 15 paragraphs. Let me know when you're done. 16 A. Okay. 17 Q. Okay. The first paragraph says "You agree to 18 exempt Power.com from any civil obligation or 19 responsibility arising from third parties that may be a 20 direct or indirect consequence of your usage of 21 Power.com, including all responsibility for complaints, 22 loss, damages, legal action, sentences, legal costs or 23 fees of any form." 24 Do you see that? 25 A. Yes.</p> <p style="text-align: right;">Page 226</p>	<p>1 THE WITNESS: I don't know if they told me 2 that it was a standard provision. But I didn't -- I 3 didn't write this. But, you know, I have seen a lot of 4 terms and conditions. And, you know, I'm not saying I'm 5 an expert on them but, you know, this seemed -- seemed 6 reasonable and, you know, seemed -- seems very standard 7 and reasonable. 8 Q. BY MR. CHATTERJEE: And the last paragraph on 9 the third page says "By logging in to our site the user 10 is agreeing to and accepting the conditions stated in 11 these Terms of Use." 12 Do you see that? 13 A. Yes. 14 Q. And was it Power's intention to require its 15 users to comply with the terms of service that -- that 16 it had with its users? 17 A. The terms of service that we had with our 18 users? 19 Q. Correct. 20 A. No. I -- I think as you can say that, you 21 know -- I mean, you can -- you can respond maybe this 22 way. Sites, including Facebook, explicitly violate 23 terms and conditions of other sites and have done that 24 by scraping other sites for other years. And does that 25 mean that Facebook is intending, you know, to violate --</p> <p style="text-align: right;">Page 228</p>

<p>1 they violated terms and conditions. Google has an</p> <p>2 explicit clause that -- that -- that Facebook and many</p> <p>3 other sites -- that Facebook has explicitly scraped data</p> <p>4 from sites against their terms and conditions. The fact</p> <p>5 is these are -- this has been happening for years. And</p> <p>6 there's -- it's common sense that there's some things</p> <p>7 that while there's no legal precedence or no legal laws</p> <p>8 on these issues, including the issue of terms and</p> <p>9 conditions, which I think there was already a ruling on</p> <p>10 this, you know, in -- in our case itself about -- about</p> <p>11 the terms and conditions, which I'm sure you're familiar</p> <p>12 with.</p> <p>13 Again, I think you're -- to try to get --</p> <p>14 nitpick a terms and conditions that was written --</p> <p>15 it was to be overarching and say naturally I think sites</p> <p>16 historically use common sense and they -- they make</p> <p>17 their own subjective decisions if they feel something --</p> <p>18 you know, something -- that's -- that's -- each side has</p> <p>19 that right. And I believe Facebook -- you know,</p> <p>20 obviously -- that doesn't make it right, but they have</p> <p>21 the right to -- you know, Facebook has the right to, you</p> <p>22 know, to cancel accounts of users if they want to cancel</p> <p>23 accounts of users.</p> <p>24 Q. That's not my question, Mr. Vachani.</p> <p>25 A. What's your question?</p> <p style="text-align: right;">Page 229</p>	<p>1 you a very specific question.</p> <p>2 A. And I've answered the question. I've said to</p> <p>3 you that --</p> <p>4 Q. I am going to have a meet and confer --</p> <p>5 A. -- that --</p> <p>6 Q. Mr. Vachani --</p> <p>7 A. Listen to me.</p> <p>8 Q. Wait. I'm going to have a meet and confer</p> <p>9 with your counsel at the end of today.</p> <p>10 A. Okay.</p> <p>11 Q. We are going to send a letter to Judge Spero,</p> <p>12 okay, if we don't -- if you don't -- if you refuse to</p> <p>13 answer my questions. And I will ask him to either</p> <p>14 appoint a special master or to have you sit in the</p> <p>15 witness stand and answer my questions with him calling</p> <p>16 the balls and strikes there.</p> <p>17 Very simple question. Did you ask Power users</p> <p>18 to accept a terms of use restriction?</p> <p>19 MR. FISHER: Objection.</p> <p>20 THE WITNESS: I've already told you.</p> <p>21 MR. FISHER: Asked and answered.</p> <p>22 Argumentative.</p> <p>23 THE WITNESS: I've already told you the</p> <p>24 answer.</p> <p>25 Q. BY MR. CHATTERJEE: Is it yes or no?</p> <p style="text-align: right;">Page 231</p>
<p>1 Q. In that paragraph --</p> <p>2 A. Yes.</p> <p>3 Q. -- did power.com intend to hold its users to a</p> <p>4 terms of use by asking them to accept the conditions</p> <p>5 stated in them?</p> <p>6 A. Well, we -- we have a terms -- we have a terms</p> <p>7 and conditions. To hold -- as I said --</p> <p>8 Q. You wanted them to comply, right?</p> <p>9 A. We wanted them to comply. But we also like --</p> <p>10 like Facebook, like Google, and others, there's common</p> <p>11 sense put in -- there's common sense things that have no</p> <p>12 legal precedent, that have not been defined, that are --</p> <p>13 that are -- that are -- that are not easily -- they're</p> <p>14 not -- don't have precedence yet.</p> <p>15 Q. Move to strike as nonresponsive.</p> <p>16 Mr. Vachani, isn't it true that when you had</p> <p>17 users on the power.com web site, you asked them to</p> <p>18 accept obligations under a term of use?</p> <p>19 A. Okay. I already answered this question.</p> <p>20 Q. Is the answer yes or no?</p> <p>21 A. I've answered the question.</p> <p>22 Q. Is the answer yes or no?</p> <p>23 A. Can you repeat what I said to him and -- and</p> <p>24 strike that as my answer?</p> <p>25 Q. That's not an answer. Mr. Vachani, I'm asking</p> <p style="text-align: right;">Page 230</p>	<p>1 A. I've already told you we have a terms and</p> <p>2 conditions with our users. I've also stated, for</p> <p>3 further clarification if you did not hear me, that we --</p> <p>4 we -- we also understand that every site, including</p> <p>5 Power, when they have a terms and conditions it has --</p> <p>6 has certain level of discretion and makes -- makes a</p> <p>7 decision on -- on what to enforce. And there's a</p> <p>8 certain level of common sense. The same way that</p> <p>9 Facebook has specifically broken laws of other sites</p> <p>10 with their users over the years and not canceled</p> <p>11 accounts.</p> <p>12 Q. So if --</p> <p>13 A. On occasion.</p> <p>14 Q. So if the user breached the agreement, Power</p> <p>15 would decide whether to exercise those rights or not,</p> <p>16 right?</p> <p>17 A. That's correct.</p> <p>18 Q. And -- and you decided to take the law into</p> <p>19 your own hands and decide for Facebook whether they'd --</p> <p>20 they could assert their terms of service or not.</p> <p>21 A. Take the law? What law?</p> <p>22 MR. FISHER: Objection. Vague.</p> <p>23 THE WITNESS: What law --</p> <p>24 MR. FISHER: Argumentative.</p> <p>25 THE WITNESS: What law --</p> <p style="text-align: right;">Page 232</p>

<p>1 MR. FISHER: Assumes facts not in evidence.</p> <p>2 THE WITNESS: -- are you referring to?</p> <p>3 MR. FISHER: Incomplete hypothetical.</p> <p>4 THE REPORTER: Okay. Whoa. Whoa. Whoa.</p> <p>5 Everybody's talking over each other.</p> <p>6 THE WITNESS: What law are you referring to?</p> <p>7 Q. BY MR. CHATTERJEE: Sure. It's very simple.</p> <p>8 There's a terms of service that you knew restricted the</p> <p>9 user's ability in using the Facebook web site, correct?</p> <p>10 MR. FISHER: Assumes facts not in evidence.</p> <p>11 Lacks --</p> <p>12 THE WITNESS: That's not the law.</p> <p>13 MR. FISHER: -- foundation. Argumentative.</p> <p>14 THE WITNESS: Facebook terms and conditions is</p> <p>15 not a law. You're a lawyer. You understand that.</p> <p>16 Neel, come on.</p> <p>17 MR. CHATTERJEE: Go back and read the</p> <p>18 question, Madam Court Reporter.</p> <p>19 Answer my question, Mr. Vachani. Not the</p> <p>20 question you want to hear.</p> <p>21 THE WITNESS: I've said to you Facebook's</p> <p>22 terms and conditions is not a law. And you also are</p> <p>23 familiar with the -- with the case that --</p> <p>24 Q. BY MR. CHATTERJEE: Mr. Vachani, you are not</p> <p>25 answering my question.</p> <p style="text-align: right;">Page 233</p>	<p>1 the answer I -- I made to my previous question back to</p> <p>2 Neel? The one that was asked differently? Would you be</p> <p>3 able to repeat that?</p> <p>4 Q. Why don't you answer my question.</p> <p>5 A. I'm asking her -- I'm asking if she can repeat</p> <p>6 the answer.</p> <p>7 Q. I get to ask the questions here, Mr. Vachani.</p> <p>8 Can you answer my question?</p> <p>9 A. And I get to also ask her to repeat it so I</p> <p>10 can clarify what I said.</p> <p>11 Q. You can have her read my question --</p> <p>12 A. So I would like -- I would like --</p> <p>13 Q. Mr. Vachani, it's my deposition. I ask you</p> <p>14 questions, you give answers. That's the way this works.</p> <p>15 A. I gave an answer. Okay? And I'm asking -- I</p> <p>16 also have the right to ask her to repeat what I just</p> <p>17 said here. So will you please just stay relaxed and let</p> <p>18 me ask this -- let me ask her to repeat that. And then</p> <p>19 I will lis -- and then if appropriate I will -- I will</p> <p>20 either repeat the same answer or I will -- I will make a</p> <p>21 change. Okay?</p> <p>22 Q. Can you answer my question or not?</p> <p>23 A. Yes. But can I -- can I ask her to repeat</p> <p>24 what she recorded from what I just said? I have the</p> <p>25 right to do that, don't I?</p> <p style="text-align: right;">Page 235</p>
<p>1 A. What is your question?</p> <p>2 MR. CHATTERJEE: Could you read it back, Madam</p> <p>3 Court Reporter. Shall I ask it again? It might be</p> <p>4 simpler that way.</p> <p>5 THE REPORTER: Well, I can kind of piece it</p> <p>6 together. I mean, people are talking on top of each</p> <p>7 other.</p> <p>8 Q. BY MR. CHATTERJEE: Mr. Vachani, you knew the</p> <p>9 Facebook terms of service did not allow users to access</p> <p>10 the Facebook web site in the way that Power wanted to</p> <p>11 access the web site, correct?</p> <p>12 MR. FISHER: Objection. Assumes facts not in</p> <p>13 evidence. Lacks foundation. Incomplete hypothetical.</p> <p>14 Vague. Calls for legal conclusion.</p> <p>15 THE WITNESS: I repeat what he said and I am</p> <p>16 going to hold to that.</p> <p>17 MR. CHATTERJEE: Would you read the question</p> <p>18 back, please.</p> <p>19 (Whereupon the record was read as requested.)</p> <p>20 THE WITNESS: And I think I already answered</p> <p>21 that question. Do you want to read -- read when I</p> <p>22 responded when he asked it the first time back?</p> <p>23 Q. BY MR. CHATTERJEE: First time I asked the</p> <p>24 question that way, Mr. Vachani.</p> <p>25 A. No. But, well -- can you -- can you repeat</p> <p style="text-align: right;">Page 234</p>	<p>1 Q. I'm going to ask you the question one more</p> <p>2 time.</p> <p>3 A. But I --</p> <p>4 Q. No. Mr. Vachani, you can either answer it or</p> <p>5 you can't. If you can't answer it, tell me you can't</p> <p>6 answer it.</p> <p>7 You knew that the Facebook terms of service</p> <p>8 did not allow Power users to access the Facebook web</p> <p>9 site in the way Power wanted to do it; isn't that right?</p> <p>10 MR. FISHER: Objection. Assumes facts not in</p> <p>11 evidence. Lacks foundation. Argumentative. Vague.</p> <p>12 THE WITNESS: And I would like to -- once</p> <p>13 again, I would like to ask you the previous question,</p> <p>14 can you repeat my answer? I -- I'm not answering your</p> <p>15 question yet. I'm asking her to repeat the answer I</p> <p>16 made to your previous question which was similar.</p> <p>17 MR. CHATTERJEE: Okay. Let's take a break.</p> <p>18 Tim, we're doing our meet and confer right now.</p> <p>19 THE VIDEOGRAPHER: We are going off the</p> <p>20 record. The time is 3:28 p.m.</p> <p>21 (Whereupon a break was taken from 3:28 to</p> <p>22 3:37.)</p> <p>23 THE VIDEOGRAPHER: We are back on the record.</p> <p>24 The time is 3:37 p.m.</p> <p>25 THE WITNESS: So I previously wanted -- I</p> <p style="text-align: right;">Page 236</p>

<p>1 asked if I -- if it was possible for her to read back my 2 answer so I could listen to what -- what she recorded 3 for the previous answer, which you were not satisfied 4 with, so I can hear it and -- and then think about your 5 question again. Can I do that?</p> <p>6 MR. CHATTERJEE: Read my question back, 7 please, Madam Court Reporter.</p> <p>8 THE WITNESS: Not the question. I've asked 9 her to read back --</p> <p>10 Q. BY MR. CHATTERJEE: The answer's no. Answer 11 my question, Mr. Vachani. Are you going to answer it or 12 not?</p> <p>13 A. Let me ask a question. I don't know who -- 14 who creates the rules here. I'm -- previously when I 15 had a question and I wanted to hear something, I was 16 allowed to. How come I'm not allowed to now?</p> <p>17 Q. The rules, Mr. Vachani, are very simple. I 18 ask a question, you give an answer.</p> <p>19 A. And I'm not -- I'm now allowed -- you're 20 saying that I am not allowed to ask her to repeat?</p> <p>21 Q. You -- you will have a chance to review your 22 deposition afterwards and make any changes you think are 23 appropriate. You've chosen not to do that with respect 24 your 2011 deposition, even though there are clear errors 25 in it.</p> <p style="text-align: right;">Page 237</p>	<p>1 similar process where almost -- where -- where almost, 2 for example, Google has a clause that states in their 3 things that users cannot do it, but Facebook has 4 continued to do it. And -- and I'll ignore these 5 things.</p> <p>6 And I said about five minutes ago -- let me 7 finish, please.</p> <p>8 Q. BY MR. CHATTERJEE: Finish.</p> <p>9 A. I said five minutes ago that terms and 10 conditions are created by -- by a site. And the 11 decision -- the decision on -- on interpreting those 12 terms and conditions and how companies choose to respond 13 to their users have been and continue to be very 14 subjective. Facebook has been very subjective, Power 15 has been very subjective, and there is no legal 16 precedent. So we can have a discussion all day on this 17 issue. But I've answered the question to you that I -- 18 we are very familiar and have read Facebook terms and 19 conditions.</p> <p>20 Q. Okay. Let's step back. You said you've read 21 Facebook's terms and conditions. That was prior to 22 accessing the Facebook web site as pursuant to the 23 December 2008 launch, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Did you believe under your reading of the</p> <p style="text-align: right;">Page 239</p>
<p>1 Madam Court Reporter, read my question back. 2 If you cannot answer it, you can so state. 3 And we will go to court and we will get answers to these 4 questions.</p> <p>5 A. So you're -- so you're not going to let me 6 hear -- hear what I said even though you're telling me 7 what -- my answer was not appropriate. And I'm saying 8 to you the reason that I would like to hear it is so 9 that I can understand what I said, what you said, and 10 then think about your question again. But you -- you 11 irrationally not allowing me to.</p> <p>12 Q. I'm not going to argue with you. I'm here to 13 ask you questions. You're here to give answers.</p> <p>14 Madam Court Reporter, read the question back. 15 (Whereupon the record was read as requested.)</p> <p>16 THE WITNESS: Okay. And what I -- what I 17 think I've already said in my previous question -- and 18 I'll try to -- try to repeat it again is that we have 19 read the terms and conditions. We're familiar with the 20 terms and conditions. And we -- we -- we knew -- we 21 knew what were in the Facebook terms and conditions.</p> <p>22 And if -- if you look at my previous 23 deposition we -- we -- what I said here and I'll repeat 24 it again. What we concluded is that Facebook for years 25 built its entire company against the will, against a</p> <p style="text-align: right;">Page 238</p>	<p>1 terms and conditions of Facebook's web site that the 2 access that Power was engaging in was a violation of the 3 terms of service or was it allowed by the terms of 4 service?</p> <p>5 MR. FISHER: By "you," do you mean him in his 6 individual capacity now, Neel?</p> <p>7 MR. CHATTERJEE: I will start there.</p> <p>8 THE WITNESS: Do I believe in my individual 9 capacity that is a violation of what? Of the Facebook 10 terms and service?</p> <p>11 Q. BY MR. CHATTERJEE: Yeah. Let me state it a 12 different way. Did you believe that the -- that the 13 terms of service of the Facebook agreement authorized 14 Power users to access the Facebook web site in the way 15 the Power system operated?</p> <p>16 MR. FISHER: Objection. Vague. Calls for a 17 legal conclusion. You may answer.</p> <p>18 THE WITNESS: And I think I've answered this 19 previously and today. Is that as part of our analysis 20 we've looked at not only Facebook -- and this is -- I'm 21 not a lawyer and -- but I'm telling you, you asked me 22 personally. In part of our analysis we looked at 23 Facebook's previous conduct in addressing this issue 24 with many other sites and their blatant violation of -- 25 of terms of conditions on -- and exacting data, we</p> <p style="text-align: right;">Page 240</p>

<p>1 looked at the industry as a whole, and we saw no -- no</p> <p>2 precedent for -- you know, on these issues and therefore</p> <p>3 felt that if it was an issue, this is something that</p> <p>4 would be determined -- and it has been determined by the</p> <p>5 courts. Finally, I -- I believe --</p> <p>6 Q. BY MR. CHATTERJEE: Okay. There -- there</p> <p>7 might be some confusion in my question.</p> <p>8 A. Okay.</p> <p>9 Q. I'm not asking about anything other than the</p> <p>10 terms of service. Just that standing alone.</p> <p>11 A. Okay.</p> <p>12 Q. Was there any concern in your mind when you</p> <p>13 read that terms of service that the way Power wanted to</p> <p>14 access the Facebook web site would be a violation of</p> <p>15 Facebook's terms of service?</p> <p>16 MR. FISHER: Objection. Vague. Calls for a</p> <p>17 legal conclusion.</p> <p>18 THE WITNESS: I would agree calls -- you're</p> <p>19 asking for a legal conclusion that I'm not able to --</p> <p>20 Q. BY MR. CHATTERJEE: I'm just asking you for</p> <p>21 whether there was any concern in your mind, not whether</p> <p>22 there's a legal violation.</p> <p>23 A. Concern is irrelevant. You know, this is --</p> <p>24 you're asking me --</p> <p>25 Q. Mr. Vachani, it is not a matter of you to</p> <p style="text-align: right;">Page 241</p>	<p>1 answer it. We're not going to waste time on that.</p> <p>2 A. I just want it for the record, I plead my</p> <p>3 answer. I said yes, I have answered it, and I have it</p> <p>4 recorded --</p> <p>5 MR. CHATTERJEE: Let's mark that as the next</p> <p>6 exhibit.</p> <p>7 (Plaintiff's Exhibit No. 212 marked for</p> <p>8 identification.)</p> <p>9 THE WITNESS: Okay.</p> <p>10 Q. BY MR. CHATTERJEE: The document I've handed</p> <p>11 you, Exhibit 212, is a series of e-mails between Bruno</p> <p>12 Carvalho and yourself. Also Eric Santos is on some of</p> <p>13 these e-mails. What is Digsby, D-i-g-s-b-y?</p> <p>14 A. Digsby was a site that aggregated messaging,</p> <p>15 which I believe Facebook also very aggressively</p> <p>16 threatened with legal action in many other ways and</p> <p>17 later, you know, I guess came to some kind of</p> <p>18 resolution.</p> <p>19 Q. Okay. Let's -- let's use this as a question</p> <p>20 and answer training moment.</p> <p>21 A. Okay.</p> <p>22 Q. I asked you what is Digsby.</p> <p>23 A. Okay.</p> <p>24 Q. What is Digsby?</p> <p>25 A. I believe it was an internet downloadable</p> <p style="text-align: right;">Page 243</p>
<p>1 determine relevance or not.</p> <p>2 Was there a concern in your mind or not?</p> <p>3 A. Was there a concern?</p> <p>4 MR. FISHER: Same objections. Argumentative.</p> <p>5 THE WITNESS: I think our company's actions</p> <p>6 speak for themselves. Because, you know, I'm -- I was</p> <p>7 the CEO of the company. And the company -- the company</p> <p>8 made a -- made a -- made a decision which I've already</p> <p>9 articulated, testified, and -- and I've also -- we've</p> <p>10 also had years -- we've had years of discussions on this</p> <p>11 issue, we've had court rulings on this issue, and you</p> <p>12 continue to ask the same question which I think we're --</p> <p>13 we're -- you know --</p> <p>14 Q. BY MR. CHATTERJEE: It's because you're not</p> <p>15 listening to my question. I'm going to move on.</p> <p>16 A. I am listening to my question.</p> <p>17 Q. You aren't. We're going -- Mr. Vachani --</p> <p>18 MR. FISHER: There's no point to arguing about</p> <p>19 this. Go to the next question.</p> <p>20 Q. BY MR. CHATTERJEE: -- we're going to go to</p> <p>21 court over this. We're going to have these questions</p> <p>22 answered.</p> <p>23 A. Do you mind asking the question one more time?</p> <p>24 Q. You're not answering them now. No. I'm --</p> <p>25 I'm done. I've asked it ten times. You don't want to</p> <p style="text-align: right;">Page 242</p>	<p>1 application that the user downloaded that aggregated</p> <p>2 messages. Instant messaging across many sites.</p> <p>3 Q. Was it like Meebo?</p> <p>4 A. Like Meebo, but I think it had other</p> <p>5 functionality and it was a downloadable application.</p> <p>6 Q. Why did you ask Mr. Santos to study exactly</p> <p>7 how Digsby is doing what they do so you can learn from</p> <p>8 them?</p> <p>9 A. It's common sense when you're -- when you're</p> <p>10 looking at -- at making business decisions, you're</p> <p>11 looking to see what's out in the industry, you -- you --</p> <p>12 you look at they way that they are interacting with</p> <p>13 sites, you make common sense decisions based on what's</p> <p>14 happening, you know, and things that don't necessarily</p> <p>15 have precedence. You know, the best thing you can do is</p> <p>16 look at -- you know, look at the previous interaction to</p> <p>17 sites, look at how the -- look at if there have been</p> <p>18 legal issues, look at if there have been court issues to</p> <p>19 make a -- make a -- a standard -- standard business</p> <p>20 decision.</p> <p>21 Q. Okay.</p> <p>22 A. So we were analyzing Digsby, along with many</p> <p>23 other sites, because they had relationships with -- with</p> <p>24 these companies.</p> <p>25 Q. The following sentence you say "Facebook is</p> <p style="text-align: right;">Page 244</p>

<p>1 not blocking them."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Now, this is prior to the launch of -- of the</p> <p>5 Power web site, right?</p> <p>6 A. I believe actually the Power site was live</p> <p>7 more or less -- I mean, I don't know what day, it was</p> <p>8 29th or 30th.</p> <p>9 Q. Had it launched on Facebook yet?</p> <p>10 A. I believe it was lawn -- it was on Facebook.</p> <p>11 Q. Okay. Was there --</p> <p>12 A. I believe it went live on Facebook around the</p> <p>13 29th or 28th.</p> <p>14 Q. Was there a concern at this time that Facebook</p> <p>15 might block Power?</p> <p>16 A. Anything is possible. I mean, when you say</p> <p>17 concern, it's just standard, anything's possible.</p> <p>18 Facebook could -- Facebook obviously had a history of --</p> <p>19 of very aggressively bullying companies to -- around</p> <p>20 different issues and every issue was on the table. So</p> <p>21 we wanted to understand -- you know, try to learn. And</p> <p>22 we say -- we saw that Digsby offered something and it</p> <p>23 was working on Facebook. And, you know, it -- it's a</p> <p>24 part of our decision making. We see that they're</p> <p>25 offered in aggregated messaging, they're accessing</p> <p style="text-align: right;">Page 245</p>	<p>1 look at Facebook's history over the years and make --</p> <p>2 make business decisions. And make -- you know, we --</p> <p>3 we're not lawyers, but we -- we -- we consult and in</p> <p>4 some occasions we consult our lawyers. And we made a</p> <p>5 business decision that this is -- you know, we're --</p> <p>6 that we're not doing anything wrong here and we continue</p> <p>7 to believe that we did nothing wrong.</p> <p>8 Q. And the business decision was to make sure</p> <p>9 that you could avoid being blocked?</p> <p>10 A. It was not to avoid being blocked.</p> <p>11 MR. FISHER: Objection. Assumes facts not in</p> <p>12 evidence.</p> <p>13 THE WITNESS: The business decision --</p> <p>14 MR. FISHER: Lacks foundation. Argumentative.</p> <p>15 THE WITNESS: -- was -- was how we're going to</p> <p>16 launch the functionality to our users. That was the</p> <p>17 business decision.</p> <p>18 Q. BY MR. CHATTERJEE: Okay. Had you launched</p> <p>19 now at the time this e-mail was sent?</p> <p>20 A. I believe we were live on that day, but I'm</p> <p>21 not a hundred percent sure.</p> <p>22 Q. And why did you write the phrase "Facebook is</p> <p>23 not blocking them"?</p> <p>24 A. Because we -- we were -- we were analyzing</p> <p>25 that. These guys launched something on there and</p> <p style="text-align: right;">Page 247</p>
<p>1 without Facebook Connect at that time. They didn't have</p> <p>2 any Facebook Connect. They were accessing -- doing</p> <p>3 features that were not possible on Facebook Connect.</p> <p>4 So we -- we were wondering how -- how -- how</p> <p>5 does this company Digsby do that. So may -- obviously,</p> <p>6 you know, there -- they -- there may be other -- there</p> <p>7 may be many different ways. Obviously we're not the</p> <p>8 only company out there that's accessing Facebook. We</p> <p>9 later found out that -- that Digsby may or -- you know,</p> <p>10 did -- did have their own issues with -- with -- with</p> <p>11 Facebook. And they -- they -- they -- they had some</p> <p>12 kind of -- I don't know what the final resolution was.</p> <p>13 Q. There was some resolution?</p> <p>14 A. Yeah, there was some resolution.</p> <p>15 Q. And but is it fair to say that while you may</p> <p>16 have had many, many concerns, one of your concerns was</p> <p>17 that Facebook may try and block Power from doing what</p> <p>18 they were doing?</p> <p>19 A. I think I told you in the beginning that when</p> <p>20 we started this company, we -- we -- we -- everything we</p> <p>21 were doing it had no precedence. Everything we were</p> <p>22 doing with the user's relationship -- I mean no specific</p> <p>23 precedence. So the best that we could do is the same</p> <p>24 thing that lawyers often do and CEOs do is look at --</p> <p>25 look at precedence, look at actions on previous sites,</p> <p style="text-align: right;">Page 246</p>	<p>1 Facebook's not blocking them. So obviously it -- it</p> <p>2 seems to be something that is acceptable, you know.</p> <p>3 Q. Right. So you were concerned that there might</p> <p>4 be other circumstances where Facebook would block</p> <p>5 something?</p> <p>6 A. No. We've seen history that Facebook had</p> <p>7 very, very irrationally and, you know, threatened</p> <p>8 companies. It doesn't make it right. Just because</p> <p>9 Facebook has been irrational in the past or bullied</p> <p>10 around companies or pushed things that did not have</p> <p>11 legal precedence or in fact were wrong, doesn't make --</p> <p>12 it doesn't make it right. So the fact --</p> <p>13 Q. You're not a lawyer.</p> <p>14 A. I'm not a lawyer.</p> <p>15 Q. So don't talk about legal precedence. Okay?</p> <p>16 A. Well, I can -- I can read legal precedence and</p> <p>17 I can read decisions --</p> <p>18 Q. Okay. So are you going to offer a legal</p> <p>19 opinion on the terms of service or not?</p> <p>20 A. I'm not -- I'm not going to offer a legal</p> <p>21 opinion.</p> <p>22 Q. Okay. So let's not talk about that issue.</p> <p>23 A. Okay. Then we don't have to.</p> <p>24 Q. Okay. If you're not -- are you here to offer</p> <p>25 legal opinions?</p> <p style="text-align: right;">Page 248</p>

<p>1 A. I'm not here to offer legal opinions.</p> <p>2 Q. Okay. So don't go into legal precedence --</p> <p>3 A. Okay.</p> <p>4 Q. -- because that has nothing to do with your</p> <p>5 testimony.</p> <p>6 A. Okay.</p> <p>7 Q. Okay? Now, you noticed that Digsby was not</p> <p>8 being blocked by Facebook, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you wanted to know why, correct?</p> <p>11 A. Yeah.</p> <p>12 Q. Your -- one of your concerns, among many</p> <p>13 concerns that may have been the case, was that Facebook</p> <p>14 might block you. Whether or not it was rational or not,</p> <p>15 you were worried about that?</p> <p>16 A. It's -- it's in the realm of possibilities.</p> <p>17 Q. And you were worried that Facebook might --</p> <p>18 pardon me. Let me start.</p> <p>19 You were worried that Facebook might not like</p> <p>20 what power.com was doing or was enabling its users to</p> <p>21 do, right?</p> <p>22 A. As I said -- worry is probably not the right</p> <p>23 word. As I said that in the past exporting contacts is</p> <p>24 something that nobody has ever, you know, liked when it</p> <p>25 was they're the ones receiving it. But it's some --</p> <p style="text-align: right;">Page 249</p>	<p>1 we anal -- we analyzed the Facebook terms and</p> <p>2 conditions.</p> <p>3 Q. Okay. So the business decision when you're</p> <p>4 talking about that, the business decision associated</p> <p>5 with terms of use is really whether -- when you were</p> <p>6 talking about your own web site Power --</p> <p>7 A. Yeah.</p> <p>8 Q. -- was really a matter of is it in the</p> <p>9 business interest to enforce their terms of use or not?</p> <p>10 A. Is --</p> <p>11 MR. FISHER: Objection. Vague.</p> <p>12 THE WITNESS: Is it in Facebook's business</p> <p>13 interest to enforce?</p> <p>14 Q. BY MR. CHATTERJEE: No. No. With respect --</p> <p>15 you -- you were talking about -- you kind of had two</p> <p>16 concepts.</p> <p>17 A. Okay.</p> <p>18 Q. One is about what Facebook may do with its</p> <p>19 terms of service and then the other is -- is what Power</p> <p>20 might do with its terms of service. I'm focused on what</p> <p>21 Power might do.</p> <p>22 A. Okay.</p> <p>23 Q. Whether or not to enforce those terms of</p> <p>24 service against, for example, Power users is a business</p> <p>25 decision, right?</p> <p style="text-align: right;">Page 251</p>
<p>1 it's standard practice for years. And so just because</p> <p>2 we're evaluating what sites are doing or not, it's --</p> <p>3 it's just -- it's just that. It's just that. It's just</p> <p>4 evaluating. To say that I'm worried or not worried --</p> <p>5 you know, I'm making standard business decisions looking</p> <p>6 at what's out there. And I'm not a lawyer. I get legal</p> <p>7 advice.</p> <p>8 Q. Okay.</p> <p>9 A. But -- and we did have legal advice on this</p> <p>10 issue.</p> <p>11 Q. So if you go to the first sentence in that</p> <p>12 paragraph you say "we might need to also work with</p> <p>13 facebook terms and conditions to do this."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. What did you mean when you wrote that?</p> <p>17 A. I'm saying that Facebook has the terms and</p> <p>18 conditions which we've already acknowledged that we're</p> <p>19 familiar with. And so if -- you know, while -- while</p> <p>20 those things are vague and ambiguous and very extensive</p> <p>21 and not -- and not -- and everybody -- and very</p> <p>22 subjectively enforced when it's appropriate, it's like I</p> <p>23 said previously, as a business we analyze everything</p> <p>24 before making a business decision of what -- you know,</p> <p>25 of what to do. You know, that we made -- and we -- and</p> <p style="text-align: right;">Page 250</p>	<p>1 A. To enforce?</p> <p>2 Q. The terms of use that you have --</p> <p>3 A. Of Facebook?</p> <p>4 Q. No. With Power users. Power against Power</p> <p>5 users. Whether to enforce those terms of service.</p> <p>6 A. Which -- which terms of service?</p> <p>7 Q. Power's.</p> <p>8 A. I think I was referring to Facebook's terms of</p> <p>9 service here.</p> <p>10 Q. Okay.</p> <p>11 A. Not Power's terms of service.</p> <p>12 Q. Put the document down.</p> <p>13 A. Okay.</p> <p>14 Q. You had a terms -- Power Ventures had a terms</p> <p>15 of service --</p> <p>16 A. Yes.</p> <p>17 Q. -- with its users.</p> <p>18 A. Yes, we did.</p> <p>19 Q. Those users may breach that agreement, in</p> <p>20 other words not comply with it.</p> <p>21 A. It's -- yes.</p> <p>22 MR. FISHER: Objection. Lacks foundation.</p> <p>23 Q. BY MR. CHATTERJEE: And whether Power would</p> <p>24 want to do something about that or not would be a</p> <p>25 business decision.</p> <p style="text-align: right;">Page 252</p>

<p>1 A. Well, first of all, whether they breached it</p> <p>2 is a -- whether they're breaching it is a very</p> <p>3 subjective issue and an issue that, you know, has first</p> <p>4 to be decided.</p> <p>5 Q. I -- I understand that.</p> <p>6 A. Yeah.</p> <p>7 Q. But -- but whether or not Power would want to</p> <p>8 try and assert its rights or not would be a business</p> <p>9 decision if it felt there was a violation.</p> <p>10 MR. FISHER: Objection. Assumes --</p> <p>11 THE WITNESS: If they --</p> <p>12 THE REPORTER: Let -- sorry.</p> <p>13 THE WITNESS: Sorry. Go ahead.</p> <p>14 THE REPORTER: I'm sorry.</p> <p>15 THE WITNESS: Go ahead.</p> <p>16 THE REPORTER: Thank you.</p> <p>17 MR. FISHER: Lacks foundation. Assumes facts</p> <p>18 not in evidence. Incomplete hypothetical.</p> <p>19 THE WITNESS: Okay. So I will -- let me --</p> <p>20 let me answer that. I will try to answer that question</p> <p>21 for you. So the -- as I said, terms and conditions</p> <p>22 exist. And rules exist in stores and every -- common</p> <p>23 sense that there are rules which stores, web sites,</p> <p>24 etcetera, choose to enforce and there are rules they</p> <p>25 don't. You know, that's just common sense.</p> <p style="text-align: right;">Page 253</p>	<p>1 conclusion. Vague.</p> <p>2 THE WITNESS: And -- and -- and selectively</p> <p>3 does that when it's appropriate and when they want to.</p> <p>4 Q. BY MR. CHATTERJEE: Right. You don't disagree</p> <p>5 with that premise?</p> <p>6 A. I don't disagree with that, that a site -- and</p> <p>7 I also don't disagree that it's -- that it's against the</p> <p>8 law for -- for -- if a user chooses to enter a site --</p> <p>9 and I think, in fact, we've had -- already had some kind</p> <p>10 of legal precedent on this in our own case on this</p> <p>11 issue. That's already been discussed and, you know,</p> <p>12 some decisions have been made by the court.</p> <p>13 MR. CHATTERJEE: This has been previously</p> <p>14 marked as Niehaus Exhibit 146. Just to keep clarity of</p> <p>15 record, let's also mark it as Exhibit 213 to this</p> <p>16 deposition.</p> <p>17 (Plaintiff's Exhibit No. 213 marked for</p> <p>18 identification.)</p> <p>19 Q. BY MR. CHATTERJEE: Actually, before we -- we</p> <p>20 get to that, I'll -- I'll turn back to it. I just -- I</p> <p>21 had one question for you that I want to make sure I ask</p> <p>22 Mr. Vachani, that I've been forgetting to ask. I'm</p> <p>23 going to refer to the 100 by 100 by 100 campaign.</p> <p>24 A. Sure.</p> <p>25 Q. You know what I'm referring to?</p> <p style="text-align: right;">Page 255</p>
<p>1 Q. BY MR. CHATTERJEE: And everyone's going to</p> <p>2 choose which ones are important to them, right?</p> <p>3 MR. FISHER: Objection. Vague.</p> <p>4 THE WITNESS: Every site -- every site has the</p> <p>5 right to -- to choose -- choose that.</p> <p>6 Q. BY MR. CHATTERJEE: Okay. Is it -- is it</p> <p>7 Power Ventures' position that Facebook doesn't have the</p> <p>8 ability to choose which of its terms of service rights</p> <p>9 it chooses to enforce?</p> <p>10 THE WITNESS: No.</p> <p>11 MR. FISHER: Objection. Calls for</p> <p>12 speculation.</p> <p>13 THE WITNESS: They -- they -- Facebook has the</p> <p>14 right to do anything they want on their own site.</p> <p>15 Q. BY MR. CHATTERJEE: What about with respect to</p> <p>16 its terms of service?</p> <p>17 A. Yeah, face -- of course. Facebook wants to,</p> <p>18 you know, punish their users or punish -- punish their</p> <p>19 users, they have the right to punish their users. In</p> <p>20 fact, they do disable accounts, you know, whenever --</p> <p>21 on -- on many issues.</p> <p>22 Q. And Facebook, just like -- just like Power,</p> <p>23 Facebook has the right to limit the authorization of</p> <p>24 access to the web site, right?</p> <p>25 MR. FISHER: Objection. Calls for legal</p> <p style="text-align: right;">Page 254</p>	<p>1 A. Yes, I do.</p> <p>2 Q. Did Power offer financial incentives to its</p> <p>3 users to try and promote the Power web site by sending</p> <p>4 event notices on Facebook?</p> <p>5 MR. FISHER: Objection. Vague. Assumes facts</p> <p>6 be in evidence. Lacks foundation.</p> <p>7 THE WITNESS: By sending event notices?</p> <p>8 Q. BY MR. CHATTERJEE: Those event listings.</p> <p>9 A. What Power offered -- the specific offer was</p> <p>10 if you generate 100 new users to Power, that's -- you</p> <p>11 know, you -- you will -- you will -- you will be</p> <p>12 rewarded. You will -- it was a -- it was a -- it was a</p> <p>13 promotion.</p> <p>14 Q. Was that a financial incentive?</p> <p>15 MR. FISHER: Objection. Vague.</p> <p>16 THE WITNESS: I think it -- our -- our reward</p> <p>17 was you get a hundred dollars. So I believe that --</p> <p>18 that's -- that's a financial incentive.</p> <p>19 Q. BY MR. CHATTERJEE: Okay. All right. Let's</p> <p>20 go to this Exhibit 213 which is also Niehaus 146. This</p> <p>21 is a press release that was sent out December 1, 2008.</p> <p>22 Was this sent out in conjunction with the -- the launch</p> <p>23 of power.com?</p> <p>24 A. The PR launch, yes.</p> <p>25 Q. Okay. At the bottom of the first page it says</p> <p style="text-align: right;">Page 256</p>

<p>1 ""Although Power is significantly"" access -- pardon me 2 It says ""Although Power is significantly accelerating 3 this imminent evolution"" towards ""a borderless 4 internet, we are preserving the essence of these sites' 5 terms of use by giving users rightful control of their 6 own content and friends."" 7 Do you see that? 8 A. Yes. 9 Q. Did you author this document? 10 A. This was authored by I believe our PR agency 11 Ed Niehaus. 12 Q. Did you review it and approve it? 13 A. I did. 14 Q. Did you have any contribution to the sentence 15 that I just read? 16 A. I didn't. But I -- I -- I -- I -- I agree 17 with the sentence. 18 Q. What -- do you know -- do you understand what 19 was meant by the statement "...we are preserving the 20 essence of these sites' terms of use by giving users 21 rightful control of their own content and friends"? 22 MR. FISHER: Calls for speculation. 23 THE WITNESS: Yeah, I tell you what I -- what 24 -- what -- what we feel. Facebook, among with many 25 other sites, have -- you can call it hypocritically or</p> <p style="text-align: right;">Page 257</p>	<p>1 the terms of use said. 2 A. No. So what -- this is a -- this is a 3 marketing statement, not a legal statement. And the 4 word essence is a very vague statement and I think it 5 should be left at that and not tried to be viewed in any 6 way reference to the legal -- legal terms and other 7 issues. 8 Q. What in the -- in the sites' terms of use 9 indicated that people weren't going to try and protect 10 their borders? 11 A. Well, I think that across -- the -- the 12 biggest precedent that we have -- there's many other 13 issues. But the biggest precedent referred to is 14 accessing and importing data. A practice that seems to 15 be, you know, very -- it's a big part of data 16 portability and access to data. We've seen that 17 happening across the entire internet for eight years, 18 seen Facebook applying that and never having any issue 19 and seeing Facebook make statements that users control 20 and own their own data. 21 Q. And you don't know how Facebook does that, 22 right? You don't know whether they have agreements with 23 other peer -- people or not? 24 A. Actually, I do -- I do know. I do know how 25 they started. I know for the first few years that they</p> <p style="text-align: right;">Page 259</p>
<p>1 have continued to make statements that they support the 2 rights for users to own and control their own data. 3 And, in fact, it's widely and commonly expected across 4 the entire industry. And so it's -- it was expected and 5 not only that, there are -- I think Facebook is even 6 members of data portability groups that have strong 7 statements about these rights. 8 And so the fact that Facebook has made -- has 9 made and continues to make, you know, such strong public 10 statements and the rest of the industry about the 11 ability to access data and also based on the fact that 12 we saw that Facebook for years had -- had -- had 13 authored -- had given tools to their own users to scrape 14 sites, get their own data, we -- we basically believe -- 15 when we say the essence, the essence is that. Is that 16 obviously there are no legal precedence on this issue. 17 But we -- we made -- we concluded that 18 Facebook and others, you know, seem to be in support of 19 the overall right of -- of users have access to their 20 own data. 21 Q. BY MR. CHATTERJEE: Right. So the thing that 22 confused me was the use of that term terms of use in 23 there. Because what I hear you saying is you're talking 24 about things that you felt were public statements by the 25 company that were maybe inconsistent with what you felt</p> <p style="text-align: right;">Page 258</p>	<p>1 had no -- they -- they didn't have agreements. And over 2 the years as they became larger and they -- they -- and 3 other companies, they have built some. 4 At times Facebook has even come -- Facebook 5 representatives have even come to Power asking us to use 6 their exporting tools. I don't know if you're familiar 7 with this. But Facebook representatives historically 8 have -- have actually come to Power and asked us to help 9 them export users from Orkut in the -- in the past. 10 This is -- you know, there are -- there are -- these -- 11 these are issues that you got to -- you got to 12 understand that we've seen Facebook doing, we -- we've 13 seen -- we -- we made a common sense decision based on 14 public statements, based on actual actions, but there is 15 no legal precedence on these issue. 16 Q. Who from Facebook met with you? 17 A. It was the -- Julio Vasconcellos who was 18 the -- who was Brazil manager for Facebook at one point 19 approached -- approached us and -- and asked us about 20 building an exporter to export contacts from Orkut. 21 Q. And who is the "us"? 22 A. Eric. 23 Q. Eric Santos? 24 A. Yes. 25 Q. Did they meet with you or with him?</p> <p style="text-align: right;">Page 260</p>

<p>1 A. He -- he -- he approached Eric and Eric passed 2 that -- that request on to me. 3 Q. Okay. 4 A. And said that they've -- they've shown 5 interest in. 6 Q. So the knowledge of what happened between Mr. 7 Santos and Mr. Vasconcellos is just based upon what Mr. 8 Santos told you? 9 A. I believe there's an e-mail. I'm not sure, 10 but there -- there may have been an e-mail on this 11 issue. But.... 12 Q. It would be an e-mail from Mr. Santos to you? 13 A. I believe -- I don't know what kind of -- 14 how -- how the communication took place, but I'd -- I'd 15 be happy -- I can check. 16 Q. Okay. 17 A. But back to this issue -- 18 Q. And when was -- when was that -- when was that 19 discussion? 20 A. This is about a year and a half or two years 21 ago. 22 Q. In 2009? 23 A. I don't know the exact time. This person is 24 no longer with Facebook. 25 Q. Okay.</p> <p style="text-align: right;">Page 261</p>	<p>1 you're basically referring to this concept of people not 2 exercising those rights? 3 A. Yeah. And we're also -- not only exercising. 4 You're -- remember here -- we're not referring -- you 5 tend -- you tend to sort of always look at Facebook as 6 the center of everything. We -- we -- we at this time, 7 especially at this time, we were working with many sites 8 and we had never had a problem with these -- you know, 9 with -- that were like -- like the problem with 10 Facebook, you know, at this level of legal issue. 11 Usually they're common sense issues that were discussed. 12 And we were allowed to continue because the essence is 13 that of most sites, you know, that are publicly stated 14 is that users do have the right to own and control their 15 data, to access their data, and most sites are not going 16 to stop that. 17 Q. Okay. So let me probe into that a little bit. 18 What other web sites, if any, have tried to block Power 19 from being able to access their web sites? 20 A. To block or to -- well, there's different 21 discussions. So we've had -- once we had a conversation 22 with Myspace. And Myspace's issue was very different. 23 Myspace had no issue of users being able to access their 24 data. They -- they wanted it -- they wanted us to -- to 25 work out -- say, you know, ways that they -- that we --</p> <p style="text-align: right;">Page 263</p>
<p>1 A. But back to your question is -- 2 Q. Well, let me -- let me -- the way this works 3 is I ask a question and you give an answer. 4 A. Go ahead. Please. 5 Q. Going back to the statement "we are 6 preserving" these sites' -- "the essence of these sites' 7 terms of use." 8 So would you agree with me that most terms of 9 use generally forbid taking data off of one place and 10 exporting it to someplace else? 11 MR. FISHER: Objection. Vague. Calls for 12 speculation. 13 THE WITNESS: Every site's terms of use are 14 different. I believe that there are -- many of the 15 major sites have clauses on this and also have -- have 16 chosen to interpret to not -- when it comes to data 17 portability, exporting contacts and user-generated 18 activities, most sites -- except for Facebook -- have 19 chosen to -- that to not -- not to believe that that's 20 in any way threatening or harming them. I think 21 Facebook is the only company -- 22 Q. BY MR. CHATTERJEE: Right. 23 A. -- that we've seen that has does that. 24 Q. When you're making -- when you're making this 25 reference to "the essence of these sites' terms of use,"</p> <p style="text-align: right;">Page 262</p>	<p>1 that we could -- that we found that were mutually -- 2 mutually agreeable and we actually were able to -- 3 Q. Okay. You testified about that earlier. You 4 had a discussion with Myspace. Who else? 5 A. We had discussions not on data portability, 6 but with Twitter. And with Twitter the issue was 7 actually different. They just wanted to understand -- 8 have -- ask questions about -- about the site to 9 understand how we worked. Because we were a new company 10 to them and they -- they -- they had -- they had a range 11 of questions. And I'm happy to talk further about the 12 Twitter -- 13 Q. Did Orkut ever block you? 14 A. Orkut never -- we had an issue with Orkut. 15 Q. It was a simple question. Did Orkut ever 16 block you? 17 A. Did Orkut ever block us? I -- I don't know if 18 they ever blocked us -- 19 Q. Did hi5 ever block you? 20 A. Hi5 never blocked us. We had conversations 21 with hi5 and then were allowed to continue doing -- 22 doing that. And we worked on solutions. 23 Q. How about Bebo? 24 A. Bebo, no. Not that I know of for Bebo. I 25 want to clarify that each -- each company the -- when</p> <p style="text-align: right;">Page 264</p>

<p>1 they have an issue, they approached us directly and we</p> <p>2 had conversations and we solved them like -- like</p> <p>3 civilized companies.</p> <p>4 MR. CHATTERJEE: Let's mark this as Exhibit</p> <p>5 214.</p> <p>6 (Plaintiff's Exhibit No. 214 marked for</p> <p>7 identification.)</p> <p>8 Q. BY MR. CHATTERJEE: Mr. Vachani, what I've</p> <p>9 handed you is an e-mail from Andre Fernandes to Eric</p> <p>10 Santos dated May 22nd, 2009. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Go ahead and read the e-mail and let me</p> <p>13 know when you're done.</p> <p>14 A. Sure. Here is the detail --</p> <p>15 Q. Read it -- read it -- read it quietly to</p> <p>16 yourself and when you're done we can talk about it.</p> <p>17 A. Okay. I've read it.</p> <p>18 Q. Okay. Is it -- is it fair to say that that</p> <p>19 sentence -- that's written in Portuguese, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Is it fair to say that that second sentence</p> <p>22 properly translated reads Amazon has been increasing in</p> <p>23 recent months due to blockage Orkut of our IPs?</p> <p>24 A. Yeah. So let me clarify this issue. The</p> <p>25 Orkut blocking issues were very different than other</p> <p style="text-align: right;">Page 265</p>	<p>1 know, their issues were usually relating to how do you</p> <p>2 store pass -- user names and passwords and these kind of</p> <p>3 issues. Which we had issues with Orkut in the early</p> <p>4 days. They wanted to know how -- you know, they wanted</p> <p>5 to make sure that we were not a fishing site, for</p> <p>6 example. And that's a different issue when -- and</p> <p>7 Twitter, in fact, had the same issue. And hi5.</p> <p>8 But once they understood that we were a</p> <p>9 legitimate site that had a relationship with our users,</p> <p>10 that we were not in the business of fishing or any kind</p> <p>11 of illegal activities, they -- they changed their</p> <p>12 issues. But typically those were the kind of issues</p> <p>13 that we had that were relating to making sure that we're</p> <p>14 not a -- you know, we're not a fishing site.</p> <p>15 MR. CHATTERJEE: Let's mark this as the next</p> <p>16 exhibit.</p> <p>17 (Plaintiff's Exhibit No. 215 marked for</p> <p>18 identification.)</p> <p>19 THE WITNESS: Okay. Go ahead.</p> <p>20 Q. BY MR. CHATTERJEE: What I've handed you is an</p> <p>21 e-mail from Eric Santos to you as well as your response</p> <p>22 dated January 7th, 2009. Do you see that?</p> <p>23 A. Okay.</p> <p>24 Q. And hi5, according to this e-mail, was in fact</p> <p>25 blocking Power's IPs, correct?</p> <p style="text-align: right;">Page 267</p>
<p>1 issues. These -- or -- Google has had -- had</p> <p>2 standard -- had standard issues relating to increase of</p> <p>3 too many -- this is generalized rules, not against or --</p> <p>4 against Power specifically. When you have too many</p> <p>5 people accessing from a specific IP address, they had --</p> <p>6 they had rules that -- that caught the blocking spiders,</p> <p>7 blocking everything. So these are generalized rules.</p> <p>8 They were not Orkut Power-specific blocking.</p> <p>9 Q. I -- I understand that.</p> <p>10 A. So I want to clarify --</p> <p>11 Q. But my question before was very simple.</p> <p>12 A. Yeah.</p> <p>13 Q. Did -- did Power ever get blocked by Orkut?</p> <p>14 The answer to that is yes, right?</p> <p>15 A. And I answered -- what I answered to you is I</p> <p>16 said our issues with Orkut were different. They were --</p> <p>17 they were -- they were different in nature. We had</p> <p>18 issues, but they were -- they were -- they were resolved</p> <p>19 and we had conversations and we had solutions for them.</p> <p>20 Q. Okay. And the blockage was because of the way</p> <p>21 that Google's system operates?</p> <p>22 A. As far as we understood it, the way they</p> <p>23 operated -- and we had conversations with the people and</p> <p>24 they -- most every other site except for Facebook, we</p> <p>25 had -- we had conversations. Sometimes they made -- you</p> <p style="text-align: right;">Page 266</p>	<p>1 A. As I said, that we did -- we did have an issue</p> <p>2 with hi5 which we resolved with them. They wanted us</p> <p>3 to -- they wanted us to use, you know, solutions. They</p> <p>4 gave us solutions on how to -- on how to access the site</p> <p>5 and we -- and we worked with them.</p> <p>6 Q. I understand that. But hi5 was blocking the</p> <p>7 IP access?</p> <p>8 A. They had -- they had a moment when they were</p> <p>9 blocking, yes.</p> <p>10 Q. And the -- the decision that was made</p> <p>11 originally while you were talking with them was to start</p> <p>12 using these external proxies that would dynamically</p> <p>13 change the IP addresses, correct?</p> <p>14 A. Well, that's where our system naturally --</p> <p>15 when -- whenever there -- it -- it encountered it was</p> <p>16 unable to access a site, it would -- it would rotate</p> <p>17 prox -- rotate these I -- these I -- these IPs.</p> <p>18 Q. So I have a question about that actually.</p> <p>19 A. Yeah.</p> <p>20 Q. So in -- in the second sentence here that's</p> <p>21 written in -- in Mr. Santos' e-mail, it says -- I can't</p> <p>22 even -- I don't know how to pronounce it, but it says</p> <p>23 "Vamos comenzar a utilizar proxies externos com eles."</p> <p>24 You'll have the document.</p> <p>25 THE REPORTER: Okay.</p> <p style="text-align: right;">Page 268</p>

<p>1 Q. BY MR. CHATTERJEE: And isn't -- isn't that</p> <p>2 basically saying let's start by using the external</p> <p>3 proxies quickly?</p> <p>4 A. What he's basically saying is that the IPs are</p> <p>5 not working so our -- it's already -- it's already</p> <p>6 happened. It's already automatically. Whenever the</p> <p>7 system happened, it's using -- like it's basically</p> <p>8 saying it's -- it's our proxy system -- our external</p> <p>9 proxy system is in place and it's -- it's rotating IPs.</p> <p>10 Q. So our translation doesn't quite say it that</p> <p>11 way.</p> <p>12 A. Okay.</p> <p>13 Q. Our translation says that it says let's start</p> <p>14 using the external proxies.</p> <p>15 A. Yeah.</p> <p>16 Q. And the reason I'm curious about that is if it</p> <p>17 were an automated process, why would someone such as the</p> <p>18 chief technology officer have to actually issue an</p> <p>19 instruction to start using it?</p> <p>20 A. And the reason is that we actually had a</p> <p>21 conversation with -- I believe with -- with -- if I'm</p> <p>22 not mistaken, we had a conversation with hi5. And they</p> <p>23 -- the question is do we want to -- how do we want to</p> <p>24 engage in this conversation with -- with the company.</p> <p>25 And we -- we -- as we have always done, we've made every</p> <p style="text-align: right;">Page 269</p>	<p>1 conversation, he was -- he's wanted to know if -- if it</p> <p>2 was happening. But they have -- they have the ability</p> <p>3 to turn it off or turn it on. I mean, that's a -- any</p> <p>4 feature in a technical system you can turn on or off.</p> <p>5 Q. BY MR. CHATTERJEE: Was there ever any</p> <p>6 discussion about turning -- turning it -- turning it off</p> <p>7 first?</p> <p>8 MR. FISHER: Objection. Vague.</p> <p>9 THE WITNESS: Again, I -- I -- I don't</p> <p>10 remember -- I remember that -- that we were having --</p> <p>11 that we were having -- as you can see here, hi5 -- I</p> <p>12 said hi5 and my spice (verbatim) want us to implement</p> <p>13 oauth. So there was already an active discussion with</p> <p>14 them on this issue. And even -- even their issue was</p> <p>15 like it was -- it was -- there was a -- there was an</p> <p>16 open channel of communication with the company at the</p> <p>17 time of this. So it's a very different issue than with</p> <p>18 Facebook which refused to have conversations with --</p> <p>19 with -- with product managers or technical or anybody at</p> <p>20 Facebook to try to find resolution. You know, every</p> <p>21 single other company, we -- we were able to have</p> <p>22 discussions with real people at the company, find real</p> <p>23 solutions.</p> <p>24 MR. CHATTERJEE: Move -- move to strike as</p> <p>25 nonresponsive.</p> <p style="text-align: right;">Page 271</p>
<p>1 effort to engage the companies and find the solution.</p> <p>2 And, you know, as -- although we -- you know, because we</p> <p>3 know what -- we believe in what we're doing is -- is --</p> <p>4 is right and correct, but we -- we understand that they</p> <p>5 need -- they want -- they have questions.</p> <p>6 Q. I -- I -- I understand that.</p> <p>7 A. Yeah.</p> <p>8 Q. But -- but then it would seem to me the</p> <p>9 question would be should I -- should I stop this from</p> <p>10 happening. Because the way -- just the way I've heard</p> <p>11 you talking about this dynamic IP thing is it's an</p> <p>12 automated process. Is that fair, that it's an automated</p> <p>13 --</p> <p>14 A. Every system. We have -- we still have the</p> <p>15 right to turn on or off. I mean, that's a -- that's</p> <p>16 a -- that's a reality.</p> <p>17 Q. Right. And -- and here --</p> <p>18 A. But we -- but this is a standard feature</p> <p>19 that's built into our system.</p> <p>20 Q. Right. And here --</p> <p>21 A. An external proxy.</p> <p>22 Q. -- he's giving an instruction to turn it on.</p> <p>23 A. He's asking -- he's basically --</p> <p>24 MR. FISHER: Document speaks for itself.</p> <p>25 THE WITNESS: Because we -- we had -- we had a</p> <p style="text-align: right;">Page 270</p>	<p>1 Q. It's a very, very simple question.</p> <p>2 A. Okay.</p> <p>3 Q. When you were accessing hi5 --</p> <p>4 A. Yes.</p> <p>5 Q. -- was this default that did this dynamic</p> <p>6 proxy thing, was it on or off?</p> <p>7 A. I don't know if it was on or off.</p> <p>8 Q. Okay.</p> <p>9 A. I believe that -- I believe that because we</p> <p>10 were having discussions with them and we were -- he was</p> <p>11 aware that we were in active discussions, you know, he</p> <p>12 said look, do you -- you know, whether it was</p> <p>13 specifically on or off, that's -- I don't know. But I</p> <p>14 think he was really trying to say should we allow the</p> <p>15 system to do this. You know, should we like keep --</p> <p>16 should we do this. I don't know technically what --</p> <p>17 what that day if it was on or off.</p> <p>18 Q. Okay. So is it your testimony that what he</p> <p>19 was saying here was not an instruction to start using</p> <p>20 the external rotating proxies?</p> <p>21 A. I think that I had asked him at that time to</p> <p>22 be sensitive to this issue. We were -- I said, you</p> <p>23 know, I think it's better to be -- let's have a</p> <p>24 conversation so don't -- so I think he was basically</p> <p>25 saying that since there's a conversation going on, I --</p> <p style="text-align: right;">Page 272</p>

<p>1 he didn't -- he didn't necessarily allow it to just 2 automatically do it. He wanted to make sure that it was 3 okay, you know, to -- to turn it -- to keep it -- keep 4 it going. And I told them that, you know, it's -- it's 5 our general --</p> <p>6 Q. Was Mr. Santos asking you a question in this 7 e-mail?</p> <p>8 A. He wasn't ask -- I don't know if he -- it says 9 let's -- let's -- it's not -- it's not a question mark 10 there.</p> <p>11 Q. So he wasn't asking a question, he was telling 12 you this is what we're going to do?</p> <p>13 A. I think he's saying this is what -- this is 14 what's happening. But he's obviously telling me so if I 15 have an issue -- I have an issue to respond to it.</p> <p>16 Q. What does "vamos" mean in Portuguese?</p> <p>17 A. Is let's. The literal translation is let's, 18 let's start.</p> <p>19 Q. Let's start using external proxies with them.</p> <p>20 A. But the understanding of this in this context 21 here is that I under -- I mean, what I understand is I 22 know you're in a conversation with them so -- and I know 23 this is a sensitive issue -- because, you know, there 24 was already an active conversation with Facebook that 25 had become very sensitive -- so based on that -- that</p> <p style="text-align: right;">Page 273</p>	<p>1 Q. Okay. And what does a production manager do?</p> <p>2 A. She was helping oversee the production of 3 products.</p> <p>4 Q. And in this e-mail dated April 24, 2009, 5 Juliane is -- is informing the three of you that Orkut 6 has blocked Power's IP.</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And then the second sentence that she 9 puts forward is that we are working to put the proxy on 10 Amazon. Right?</p> <p>11 A. That's correct.</p> <p>12 Q. And Amazon is a web-based service that has 13 dynamically rotating IPs?</p> <p>14 A. We had a -- we had a solution on -- on Amazon 15 that -- we had different -- different levels of 16 solutions and were standard IPs and different -- 17 different IP rotating banks. This was part of our 18 solution and was already in place for a long time.</p> <p>19 Q. And Amazon was one of those rotating IP 20 things?</p> <p>21 A. Amazon was one of the places that -- that 22 rotated IPs, correct.</p> <p>23 Q. Okay. Was that actually implemented?</p> <p>24 A. It was I think -- that solution was already -- 25 already in place. But I think, as you know, at this</p> <p style="text-align: right;">Page 275</p>
<p>1 issue, that it was -- it was practice at that point 2 to -- to -- to talk to me and say, you know, look, you 3 know, we -- we have this issue with Facebook which was 4 well documented. You know, how do you want to deal with 5 these other sites. And our -- our general rule, which 6 was the same with Orkut in the early days, was let's -- 7 let's keep an open channel, let's try to address every 8 concern, let's be -- and let's find through solutions as 9 we always did.</p> <p>10 MR. CHATTERJEE: Okay. Let's go to the next 11 document.</p> <p>12 (Plaintiff's Exhibit No. 216 marked for 13 identification.)</p> <p>14 Q. BY MR. CHATTERJEE: Exhibit 216 is an e-mail 15 from you -- form Juliane Conceicao to Eric Santos, you, 16 and Bruno Carvalho.</p> <p>17 A. Yeah.</p> <p>18 Q. Who is Ms. Conceicao?</p> <p>19 A. Juliane was a --</p> <p>20 Q. Hold on. Hold on. We've got to make sure the 21 court reporter gets it down.</p> <p>22 A. Sorry. Sorry.</p> <p>23 Q. It's C-o-n-c-e-i-c-a-o. Who is -- I'm going 24 to refer to her as Juliane, if that's all right.</p> <p>25 A. Okay. She was a production manager.</p> <p style="text-align: right;">Page 274</p>	<p>1 time -- even at this point we had been -- we had already 2 been on Orkut for two years, been through the 3 standard -- standard issues on their servers that turn 4 on -- every time Orkut -- Go Google would create new 5 rules in general for their site, you know, the system -- 6 you know, occasionally there would be systems that have 7 to update. But they -- we were one of -- we had 8 millions of users inside of Orkut and had a -- you know, 9 a relationship two years back. So this is -- this kind 10 of solution -- usually the system just try -- you know, 11 turned on these different protocols or we --</p> <p>12 Q. Let me just ask a general question.</p> <p>13 A. Yeah.</p> <p>14 Q. Why is it that web sites will block IP 15 addresses? To the extent you know.</p> <p>16 A. So typically --</p> <p>17 MR. FISHER: Objection. Vague. Calls for 18 speculation. Assumes facts not in evidence. Lacks 19 foundation.</p> <p>20 THE WITNESS: Typically the main reason for -- 21 is that when there are too much access from a specific 22 IP address, the system have automatic detection systems 23 that think it might be -- might be actually some kind 24 of, like, hacking system or DOS attack or some other 25 type of, you know, thing that causes -- that causes</p> <p style="text-align: right;">Page 276</p>

<p>1 damage. Not a standard site. And that's usually the</p> <p>2 case. Or if a site is not familiar with a site, they --</p> <p>3 they usually want to understand is this -- is this site</p> <p>4 a legitimate site. And as -- what -- we've been through</p> <p>5 that issue many times with many different sites over the</p> <p>6 previous two years.</p> <p>7 Q. BY MR. CHATTERJEE: I know I've asked this</p> <p>8 before. I just want to make sure that I -- I have a</p> <p>9 clear record on it. Do you remember when approximately</p> <p>10 the accesses to the Facebook web site started?</p> <p>11 A. It was I think I said the last two, three days</p> <p>12 of November I believe.</p> <p>13 Q. So 29th, 30th?</p> <p>14 A. Something like that, yes.</p> <p>15 MR. CHATTERJEE: Okay. Mark this as the next</p> <p>16 exhibit.</p> <p>17 (Plaintiff's Exhibit No. 217 marked for</p> <p>18 identification.)</p> <p>19 THE WITNESS: I don't know the exact. It was</p> <p>20 within the last week of November.</p> <p>21 Q. BY MR. CHATTERJEE: So, Mr. Vachani, this is a</p> <p>22 document 217 is an e-mail from Eric Santos to you dated</p> <p>23 December 2, 2008. Approximately three or four days</p> <p>24 after the launch promotion began.</p> <p>25 A. Yep.</p> <p style="text-align: right;">Page 277</p>	<p>1 not mistaken. I don't even know the issue. But the</p> <p>2 main thing is we -- we -- we didn't know what -- we</p> <p>3 didn't really know what Facebook's reaction would be.</p> <p>4 Q. All right. So if I understand you correctly,</p> <p>5 by this point in time you had reviewed Facebook's terms</p> <p>6 of service and you may have received a cease and desist</p> <p>7 letter from Facebook?</p> <p>8 A. I think it was either this day or the day</p> <p>9 after. I'm not a hundred percent sure what day it was.</p> <p>10 Q. And around that time frame Mr. Santos stated</p> <p>11 he'll prepare for a possible block by Facebook?</p> <p>12 A. Oh, he was -- he was trying to evaluate the</p> <p>13 systems if -- if our -- if our system is unable to</p> <p>14 access Facebook.</p> <p>15 Q. Was there any doubt in your mind when he said</p> <p>16 that that Facebook was considering or may block Power</p> <p>17 from accessing the Facebook web site in the way that it</p> <p>18 did?</p> <p>19 MR. FISHER: Objection. Vague.</p> <p>20 THE WITNESS: Obviously -- obviously they --</p> <p>21 they had sent a -- a legal -- a legal threat. They had</p> <p>22 sent a legal threat. So, I mean, there -- there --</p> <p>23 there were definitely, you know, possibilities.</p> <p>24 Q. BY MR. CHATTERJEE: So you knew that they</p> <p>25 didn't feel that Power was authorized to be accessing</p> <p style="text-align: right;">Page 279</p>
<p>1 Q. Could you translate that second sentence for</p> <p>2 me?</p> <p>3 A. Sure. I will prepare for a possible block on</p> <p>4 the part of Facebook.</p> <p>5 Q. What did you understand that to mean?</p> <p>6 A. I believe that, as we've talked about</p> <p>7 previously, we understand that it's possible that</p> <p>8 Facebook, you know, may -- may -- either their system</p> <p>9 automatically or -- or obviously because at this point</p> <p>10 we had also received a -- you know -- in other words,</p> <p>11 there could be -- they could take actions to -- to try</p> <p>12 to block -- to try to block Power. So I think that was</p> <p>13 -- that was what he was saying.</p> <p>14 Q. Was -- was there any particular reason that</p> <p>15 Mr. Santos and you didn't prepare for that before</p> <p>16 launching the -- the hundred by hundred by hundred</p> <p>17 campaign?</p> <p>18 A. Well, we have many -- we have many things --</p> <p>19 standard things in place. But if they're -- I think</p> <p>20 he's saying, well, we don't really know what. We had</p> <p>21 received a -- you know, a letter from Facebook I think</p> <p>22 that day or the day before on December 1st or December</p> <p>23 2nd. I'm not sure if this was, you know, before or</p> <p>24 after that. I think it was -- it might have been -- I</p> <p>25 think we may have received it on December 1st, if I'm</p> <p style="text-align: right;">Page 278</p>	<p>1 Facebook in the way that Power was doing?</p> <p>2 A. We knew that Facebook had -- Facebook had</p> <p>3 expressed, you know, their opinion that they -- that's</p> <p>4 correct.</p> <p>5 MR. CHATTERJEE: We're getting to an easier</p> <p>6 part for a little while. 218.</p> <p>7 (Plaintiff's Exhibit No. 218 marked for</p> <p>8 identification.)</p> <p>9 THE WITNESS: Okay.</p> <p>10 Q. BY MR. CHATTERJEE: Okay. The document I've</p> <p>11 given you as Exhibit 218, what -- what is this document,</p> <p>12 Mr. Vachani?</p> <p>13 A. What is this document? This is a -- looks</p> <p>14 like -- this looks like an e-mail from Facebook.</p> <p>15 Q. This is an e-mail that you received?</p> <p>16 A. This e-mail that I received. I don't know if</p> <p>17 this was a test e-mail or if this was from -- you know,</p> <p>18 from Facebook. I don't know that. But it looks like it</p> <p>19 was from Facebook.</p> <p>20 Q. And it was to you?</p> <p>21 A. Yep.</p> <p>22 Q. And then the subject line has "Ghostday</p> <p>23 Leandro Abreu," A-b-r-e-u.</p> <p>24 A. Yeah. This is an e-mail from Facebook.</p> <p>25 Q. And Leandro Abreu was -- we -- we talked about</p> <p style="text-align: right;">Page 280</p>

<p>1 him earlier today.</p> <p>2 A. Yeah. Leandro Abreu.</p> <p>3 Q. And was he a Power employee?</p> <p>4 A. He was a programmer at Power.</p> <p>5 Q. Okay. And this was an e-mail that you</p> <p>6 received?</p> <p>7 A. This -- this is an e-mail I received.</p> <p>8 Correct.</p> <p>9 Q. Okay. And this is an -- was this e-mail sent</p> <p>10 to you because an event had been listed on Mr. Abreu's</p> <p>11 page?</p> <p>12 A. Yeah, this event most was -- was most likely</p> <p>13 where Leandro manually went into Facebook. He manually</p> <p>14 created an event because -- based on the date. He</p> <p>15 manually created an event and, you know, I think --</p> <p>16 that's -- on that date.</p> <p>17 Q. Do you know why he manually created the event?</p> <p>18 A. I don't believe we were operating on face --</p> <p>19 THE REPORTER: I'm sorry. What was your</p> <p>20 objection?</p> <p>21 MR. FISHER: Calls for speculation.</p> <p>22 THE WITNESS: On March 20th we were not</p> <p>23 operating on Facebook. So therefore, you know, this was</p> <p>24 a -- you know, he would have -- he would have probably</p> <p>25 manually created -- the group was still active. There</p> <p style="text-align: right;">Page 281</p>	<p>1 hundred hundred hundred campaign.</p> <p>2 Q. This occurred after Facebook had deactivated</p> <p>3 Power from accessing -- or had blocked Power from</p> <p>4 accessing the -- the Facebook web site?</p> <p>5 A. This occurred after Power's -- Power as a</p> <p>6 company and Power's, you know, script-based systems were</p> <p>7 -- were -- where we -- where we chose to take them off.</p> <p>8 Q. And had -- was Mr. Abreu employed by Power at</p> <p>9 the time that this was posted?</p> <p>10 A. Yeah, I think he -- this was obviously posted</p> <p>11 by him manually. He must have went there and --</p> <p>12 Q. Are you aware of anyone else other than Mr.</p> <p>13 Abreu posting a similar event notification after Power</p> <p>14 stopped accessing the Facebook web site?</p> <p>15 A. It was not illegal to -- for users to go</p> <p>16 create events.</p> <p>17 Q. I'm -- I'm -- I'm not -- that's not the</p> <p>18 question I'm asking you.</p> <p>19 A. So I -- I -- I'm assuming that the group --</p> <p>20 the group was still active. If -- any e-mails that I</p> <p>21 would have received, you would have already seen in my</p> <p>22 e-mail box.</p> <p>23 Q. I -- I understand that.</p> <p>24 A. So --</p> <p>25 Q. My question is very different from that, Mr.</p> <p style="text-align: right;">Page 283</p>
<p>1 was still groups active on Facebook for creating this.</p> <p>2 So he probably just went there and -- and created -- and</p> <p>3 created an event.</p> <p>4 Q. BY MR. CHATTERJEE: Do you know why he created</p> <p>5 it?</p> <p>6 A. I don't.</p> <p>7 MR. FISHER: Calls for speculation.</p> <p>8 Q. BY MR. CHATTERJEE: It lists the host as</p> <p>9 Power.</p> <p>10 A. Yep.</p> <p>11 Q. Do you have any idea why it listed the host as</p> <p>12 Power?</p> <p>13 MR. FISHER: Same objection.</p> <p>14 THE WITNESS: Because Power -- Power created</p> <p>15 this event. I mean, this was an event hosted by Power.</p> <p>16 As you know, this was our whole thing, bring a hundred</p> <p>17 friends, hundred bucks, that was -- that was an event</p> <p>18 going -- that was a promotion and -- going on there.</p> <p>19 Q. BY MR. CHATTERJEE: But other than the date</p> <p>20 that's listed here, this -- this promotion language</p> <p>21 that's used here is the same as what was put in the</p> <p>22 events --</p> <p>23 A. This is the same -- same -- this is the same</p> <p>24 language, correct, that -- for our -- for our previous</p> <p>25 events that when users wanted to promote the -- the</p> <p style="text-align: right;">Page 282</p>	<p>1 Vachani. Are you aware of any other Power employees</p> <p>2 posting something like this after Power stopped</p> <p>3 accessing the web site?</p> <p>4 A. I don't -- I -- I'm not -- I'm not aware. But</p> <p>5 I also -- if -- if there are e-mails in my box, then I</p> <p>6 would have received it. Somebody -- since the group was</p> <p>7 active and Facebook -- you know, the group was a fully</p> <p>8 valid group on Facebook, anybody was allowed to go</p> <p>9 manually there and -- and -- and -- and, you know,</p> <p>10 create an event.</p> <p>11 Q. Was the launch promotion, this hundred by</p> <p>12 hundred by hundred campaign still active on March 12th</p> <p>13 two thousand --</p> <p>14 A. Oh, yeah. It had not -- it was a Power</p> <p>15 promotion. So it was going on on Orkut and other sites.</p> <p>16 Q. How long did it go on?</p> <p>17 A. I believe it was a hundred days. So it was</p> <p>18 more or less this was probably -- this was probably</p> <p>19 around the final date. And I'm guessing that, you know,</p> <p>20 he probably, you know, went there. So there was no</p> <p>21 issue for -- whatsoever on users going to go create a</p> <p>22 group on -- on Facebook. In fact, you know, it was</p> <p>23 fully valid thing to do, had nothing to do with our</p> <p>24 scripts.</p> <p>25 MR. CHATTERJEE: Let's mark this as the next</p> <p style="text-align: right;">Page 284</p>

<p>1 exhibit, 219.</p> <p>2 (Plaintiff's Exhibit No. 219 marked for</p> <p>3 identification.)</p> <p>4 THE WITNESS: Okay. Go ahead.</p> <p>5 Q. BY MR. CHATTERJEE: What is this document?</p> <p>6 A. This is a -- a screen shot. I don't know if</p> <p>7 this is a mock screen shot or whatever, but of -- of how</p> <p>8 the campaign for 100 would look like. I think this is</p> <p>9 probably a mock screen shot.</p> <p>10 Q. It's a mock? So it's not an actual one?</p> <p>11 A. I don't -- I don't know the difference. I</p> <p>12 mean, I -- I would have received -- you know, when we</p> <p>13 were launching the campaign they would -- they would</p> <p>14 most likely have sent to -- you know, we had previews of</p> <p>15 what it would look like. But this is -- this is more or</p> <p>16 less the general way that it would look -- that it would</p> <p>17 look -- that it would like.</p> <p>18 Q. And if you look in the middle of the page</p> <p>19 there's a section that says e-mails.</p> <p>20 A. Yep.</p> <p>21 Q. And there's a little Facebook logo. Do you</p> <p>22 see that?</p> <p>23 A. Yes.</p> <p>24 Q. I think you said earlier that you couldn't</p> <p>25 send e-mails to Facebook users. Why is it in that box?</p> <p style="text-align: right;">Page 285</p>	<p>1 recollection.</p> <p>2 Q. Which one of these would you click on, if any,</p> <p>3 if you wanted to do the event invitations through</p> <p>4 Facebook?</p> <p>5 A. This -- this was not -- the event invitation</p> <p>6 was not -- this is not from this page, this part here.</p> <p>7 Q. This was a separate form?</p> <p>8 A. It was a -- it was either -- I think you --</p> <p>9 you could either go create an event and there was also</p> <p>10 a -- a separate banner which said create an event on</p> <p>11 Facebook where the user said I want to create an event</p> <p>12 or I want to post a status update.</p> <p>13 Q. Is that the one where there were, like,</p> <p>14 several boxes --</p> <p>15 A. Yeah. I believe you guys -- yeah -- have</p> <p>16 that -- that -- that image.</p> <p>17 Q. And do you know what the default was? Did the</p> <p>18 default have all of the boxes checked or some of them</p> <p>19 checked?</p> <p>20 A. I don't. But I -- but I know that the user --</p> <p>21 there was a box saying create an event.</p> <p>22 Q. Okay.</p> <p>23 (Plaintiff's Exhibit No. 220 marked for</p> <p>24 identification.)</p> <p>25 Q. BY MR. CHATTERJEE: And again we've attached a</p> <p style="text-align: right;">Page 287</p>
<p>1 A. Our future -- I believe -- there are two</p> <p>2 explanations for this. One is it was our intention in</p> <p>3 the future to -- to send Facebook messages even if it</p> <p>4 was not a -- we, in fact, even built a thing in the</p> <p>5 database which you guys referred to that was -- we have</p> <p>6 never -- we have not used. But to be able to -- so I</p> <p>7 think our intention in the future was going to be to --</p> <p>8 to send private messages instead of e-mails. If a</p> <p>9 person wanted to communicate, send a message -- if they</p> <p>10 wanted to send an invitation to a friend instead of an</p> <p>11 e-mail, they could send it as a private message box.</p> <p>12 And we built a -- a database.</p> <p>13 Q. You built a tool for that?</p> <p>14 A. A tool for that. I don't know -- I don't know</p> <p>15 -- I believe we never -- never used it. So this was --</p> <p>16 but the second is if we already had -- there were very</p> <p>17 small amount of users. But if a user has already had</p> <p>18 the e-mail address because it was either manually</p> <p>19 entered or a user manually put the e-mail address in or</p> <p>20 they had the e-mail address because it corresponded with</p> <p>21 an e-mail in Orkut, I think we also had the ability to</p> <p>22 cross -- cross-reference when an e-mail address was not</p> <p>23 from Orkut but it was given to us by -- so I think --</p> <p>24 but I don't -- I don't believe any of those were ever</p> <p>25 actually put into action if I -- to the best of my</p> <p style="text-align: right;">Page 286</p>	<p>1 certified translation.</p> <p>2 A. Okay.</p> <p>3 Q. Okay. So if you go to the -- the third</p> <p>4 paragraph -- and I'll go to the certified -- is there</p> <p>5 anything about the translation that you take issue with?</p> <p>6 A. No.</p> <p>7 Q. Okay. In the third paragraph it says "It is</p> <p>8 important that we ensure the campaign achieves the</p> <p>9 maximum exposure possible and therefore PRIVATE MESSAGES</p> <p>10 TO ALL FRIENDS must also be sent as part of it."</p> <p>11 Do you see that?</p> <p>12 A. Correct. Yeah.</p> <p>13 Q. Do you know what Mr. Santos was talking about</p> <p>14 there? Like what --</p> <p>15 A. I think he was saying that the options on how</p> <p>16 to communicate we should have -- private mess -- what I</p> <p>17 just said in the previous comment, that it was our</p> <p>18 intention to have private messaging on Facebook. So if</p> <p>19 a user said I want to invite a Facebook friend, they</p> <p>20 could send a private message just like sending an e-mail</p> <p>21 but sending it to a Facebook mailbox.</p> <p>22 Q. Why was that important?</p> <p>23 A. Because Facebook does not have e-mails.</p> <p>24 Normally most sites allow you to import contacts and</p> <p>25 send e-mails. In the case of Facebook, Facebook</p> <p style="text-align: right;">Page 288</p>

<p>1 messaging is an equally-important communication channel.</p> <p>2 So we wanted to give our users the right and the</p> <p>3 opportunity, if they want to, to also be able to send</p> <p>4 messages to Facebook mailboxes. And that was part off</p> <p>5 our intention. We built a database scheme up, you know,</p> <p>6 for that, but I -- I don't believe that we ever got</p> <p>7 around to that.</p> <p>8 Q. Was -- was it important at all that it be the</p> <p>9 users that were sending these messages instead of Power?</p> <p>10 A. Well, users -- when you -- if you're familiar</p> <p>11 with the way that -- that -- if a -- user-generated</p> <p>12 invitations typically work on Facebook, on Google,</p> <p>13 everything else, you typically -- you basically are</p> <p>14 shown a list. On hi5 --</p> <p>15 Q. Right. And I'm not talking about how the</p> <p>16 technology works.</p> <p>17 A. Yeah. But I was talking about generally the</p> <p>18 way they work, you're basically able to choose friends</p> <p>19 to send to and you have different options.</p> <p>20 Q. Right.</p> <p>21 A. And so it was really --</p> <p>22 Q. But I'm not -- I'm not talking about how the</p> <p>23 users felt.</p> <p>24 A. Okay.</p> <p>25 Q. I'm asking was it important to Power that the</p> <p style="text-align: right;">Page 289</p>	<p>1 message, it's definitely coming from the user. In the</p> <p>2 case of an e-mail, you have two choices. Typically you</p> <p>3 can have it come -- most -- about --</p> <p>4 Q. Move to strike as nonresponsive.</p> <p>5 A. Okay.</p> <p>6 Q. My question was why was it important to Power</p> <p>7 to have the users send the invitations or the private</p> <p>8 messages?</p> <p>9 A. Well, typically when users send invitations to</p> <p>10 friends, you know, they're -- they're -- they --</p> <p>11 friends -- friends are interested in what they -- what</p> <p>12 they have to say. That's why.</p> <p>13 Q. So was the reason it was important to Power</p> <p>14 because you would then have the endorsement of those</p> <p>15 users that would allow for greater adoption of Power</p> <p>16 technology?</p> <p>17 A. I think that's what the purpose of</p> <p>18 user-generated invitations are.</p> <p>19 Q. Okay.</p> <p>20 A. Is that -- that users send -- you know, send</p> <p>21 or ask a site to send messages to their friends on their</p> <p>22 behalf in order to get them to -- to join a site.</p> <p>23 Q. So in this e-mail it also talks about</p> <p>24 "...let's activate an EVENT so that" the "users modify</p> <p>25 the STATUS of all networks inviting friends to join</p> <p style="text-align: right;">Page 291</p>
<p>1 users be the people that were actually sending those</p> <p>2 private messages instead of Power itself?</p> <p>3 A. Well, the user -- their -- user -- when --</p> <p>4 when invitations are sent, they're typically sent by --</p> <p>5 by the company that's -- by the come -- by the company.</p> <p>6 And they're authorized by the user. The users say</p> <p>7 send -- send the messages to these friends and I want to</p> <p>8 send this kind of message, I want to send --</p> <p>9 Q. I -- I -- I understand that.</p> <p>10 A. Go ahead.</p> <p>11 Q. But was it important to Power that it be the</p> <p>12 user sending that information rather than Power</p> <p>13 contacting those Facebook users itself?</p> <p>14 A. But it is the -- the user is sending that</p> <p>15 information.</p> <p>16 Q. I -- I understand. But my question was, was</p> <p>17 that important to Power?</p> <p>18 A. Yes. Well, I mean --</p> <p>19 Q. And why?</p> <p>20 A. Well, typically when you -- when you have an</p> <p>21 invitation campaign, it's the user saying I want to -- I</p> <p>22 want to get friends to sign up and they -- and they</p> <p>23 send -- and they send messages. Typically you -- Power</p> <p>24 cannot send messages. Power is just an intermediary.</p> <p>25 There's no -- not a -- especially -- well, in a Facebook</p> <p style="text-align: right;">Page 290</p>	<p>1 POWER via the personalized link."</p> <p>2 Do you see that?</p> <p>3 A. Yeah.</p> <p>4 Q. Do you know what he meant when he used the</p> <p>5 term personalized link?</p> <p>6 A. So we give -- we give users events -- links.</p> <p>7 You see there's a link there? That they can copy and</p> <p>8 paste that link. They can -- and we tell them these are</p> <p>9 all -- you can -- you can go promote this link, you can</p> <p>10 go create events, you can go send e-mails, you can go</p> <p>11 send messages. So this -- we provided them a banner</p> <p>12 stuff, we provided them a link. We provided them many</p> <p>13 different ways to promote -- you know, we wanted to give</p> <p>14 them as many -- many ways as possible to promote the --</p> <p>15 the site. And status updates --</p> <p>16 Q. So my -- my question was simple. Just this</p> <p>17 reference here, "via the personalized link."</p> <p>18 A. Yeah. It's referring to that. The -- the --</p> <p>19 a -- a user has their own --</p> <p>20 Q. So I'd have a status update where I'd say</p> <p>21 something and then there would be a link that someone</p> <p>22 would click on?</p> <p>23 A. Yeah. You say, hey, go -- can you -- I</p> <p>24 just -- I just joined Power and I want -- you know, this</p> <p>25 is very similar when you're in an app on Facebook and</p> <p style="text-align: right;">Page 292</p>

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1 THE WITNESS: I just don't want --
 2 MR. CHATTERJEE: This is Exhibit 222.
 3 (Plaintiff's Exhibit No. 222 marked for
 4 identification.)
 5 **Q. BY MR. CHATTERJEE: And, Mr. Vachani, the**
 6 **document I've given you is Exhibit 222. The -- my -- my**
 7 **primary questions are going to be about the e-mail from**
 8 **Alexander Tabor dated July 22nd, 2008.**
 9 A. Is there a translation in here or do you want
 10 me to read the Portuguese?
 11 **Q. I have a loose translation on my own but --**
 12 A. Do you want me to read the translation that
 13 you're referring to?
 14 **Q. No. You can go ahead and read the actual**
 15 **language. I'll -- I'll get you going on. And I'm --**
 16 **I'm mainly interested in that last bullet point starting**
 17 **with "Usuarios ficam...."**
 18 A. Okay.
 19 **Q. Okay. What does that last bullet point mean?**
 20 A. That -- users -- he's giving many
 21 possibilities. Right now in this -- this section he's
 22 talking about hypothetically the many different
 23 possibilities that a user, you know, could -- you know,
 24 could or could not, you know, complain. He's not
 25 talking -- he's not giving any -- these are hypothetical

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1 scenarios. That's because -- I just want to give you
 2 context for all -- it could be slow, it could be bugs,
 3 it could be a -- a blocking, the sites could be not
 4 working.
 5 **Q. Right. I'm just asking about the last bullet**
 6 **point.**
 7 A. Yeah. If the users could -- could also be --
 8 you know, not -- it could said that the campaigns are
 9 sending too many e-mails or scraps to their friends.
 10 I -- if -- for example, if a campaign preselects a check
 11 box and -- and has a system send e-mail scraps tell all
 12 your friends, if -- do you think maybe this practice has
 13 some users who might stop using PowerScrap because of
 14 this.
 15 **Q. So isn't it true that that first sentence**
 16 **translated means users are upset with our campaigns that**
 17 **send many e-mails or comments to their friends?**
 18 A. He's making a hypothetical. He's saying --
 19 he's saying users could -- could be upset.
 20 **Q. Right.**
 21 A. You see the whole thing here is just
 22 possibilities of things in his ideas of things that
 23 users, you know, hypothetically could be upset with on a
 24 site.
 25 **Q. Right. And then in July of 2008, for some**

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<p>1 reason that was unknown to Power, the ability to access</p> <p>2 the Orkut web site was encountering problems, right?</p> <p>3 A. That's a different issue. There were -- there</p> <p>4 were along the two years that we were working, you know,</p> <p>5 we found -- for example, if -- if the frequency of</p> <p>6 accessing increased too rapidly, a site -- or Google had</p> <p>7 automatic blocks, you know, if -- if they have too</p> <p>8 frequency of access. There were a range of different</p> <p>9 reasons. So....</p> <p>10 Q. So that first sentence above the bullet</p> <p>11 points, doesn't that first sentence mean that access may</p> <p>12 be decreasing for several reasons and it says some of</p> <p>13 the possibilities are or may be?</p> <p>14 A. Yeah. And he was trying -- we was saying that</p> <p>15 apparently that -- that week there had been some</p> <p>16 reduction. And he just gave a hypothetical possibility</p> <p>17 of all the possibilities of reasons. None -- you know,</p> <p>18 in his exhaustive list of anything that could possibly</p> <p>19 be causing it.</p> <p>20 Q. These types of e-mails that were sent from Mr.</p> <p>21 Tabor, Mr. Santos, Juliane --</p> <p>22 A. Yeah.</p> <p>23 Q. -- etcetera, these are documents that were</p> <p>24 sent in the ordinary course of -- of Power's business?</p> <p>25 A. Yeah. These are just like, you know, ordinary</p> <p style="text-align: right;">Page 297</p>	<p>1 THE WITNESS: Okay.</p> <p>2 Q. BY MR. CHATTERJEE: Okay. Who is Rick Latona?</p> <p>3 A. I believe he's a domain -- a domain financier.</p> <p>4 Q. What is a domain financier?</p> <p>5 A. Basically someone that lends you money on your</p> <p>6 domain.</p> <p>7 Q. For what?</p> <p>8 A. Like if you -- like if you own a house and you</p> <p>9 have equity in that, they can hold on to the domain and</p> <p>10 provide you money.</p> <p>11 Q. Oh. So he -- he -- did -- was he kind of like</p> <p>12 a mortgage person?</p> <p>13 A. Well, domains like Power which have -- have --</p> <p>14 have significant value, like a house or whatever, and</p> <p>15 there's an appraisal value and then there's a value that</p> <p>16 you can borrow on the domain. So he's someone that --</p> <p>17 he's a -- he's a domain -- in the domain industry. And</p> <p>18 we had conversations on the possibility of taking out</p> <p>19 a -- a loan at one point, which we didn't -- we never</p> <p>20 actually completed.</p> <p>21 Q. And there's a -- a reference in here to</p> <p>22 something called browser emulation.</p> <p>23 A. Uh-huh.</p> <p>24 Q. What was browser emulation?</p> <p>25 A. The Power browser is just -- one way that the</p> <p style="text-align: right;">Page 299</p>
<p>1 course of business. You know, hey, what -- why -- why</p> <p>2 is the site too slow today, why -- is there a bug on the</p> <p>3 site that's causing a problem, is there a server</p> <p>4 problem. And he -- this is -- he's basically just</p> <p>5 saying here these are --</p> <p>6 Q. He was listing all the potential causes?</p> <p>7 A. All of the potential things that -- that</p> <p>8 could -- that could have -- could have caused it in his</p> <p>9 opinion.</p> <p>10 MR. CHATTERJEE: I think we're about out of</p> <p>11 tape. Let's take a break for about ten minutes.</p> <p>12 THE VIDEOGRAPHER: This ends videotape number</p> <p>13 three. The time is 4:49 p.m. on January 9th, 2012, and</p> <p>14 we are off the record.</p> <p>15 (Whereupon a break was taken from 4:50 to</p> <p>16 4:59.)</p> <p>17 THE VIDEOGRAPHER: This begins videotape</p> <p>18 number four in the continuing deposition of Power</p> <p>19 Ventures, Inc. The time is 4:59 p.m. on January 9th,</p> <p>20 2012, and we are back on the record.</p> <p>21 MR. CHATTERJEE: If we can mark that next</p> <p>22 document 223. Let me know when you're done reviewing</p> <p>23 it, Mr. Vachani.</p> <p>24 (Plaintiff's Exhibit No. 223 marked for</p> <p>25 identification.)</p> <p style="text-align: right;">Page 298</p>	<p>1 Power browser works is it basically, it -- it's a</p> <p>2 web-based browser, but it -- it can -- it can basically</p> <p>3 have -- simulate or work similar to any of the major</p> <p>4 browsers. So when interacting with a site. So it can</p> <p>5 be in addition to -- it can be like -- it can work</p> <p>6 with -- an internet explorer browser. So it can have</p> <p>7 compatibility when -- when -- it's a new type of browser</p> <p>8 and it's just a feature inside our browser.</p> <p>9 Q. If you look at the first e-mail on the string,</p> <p>10 one, two, three, four, five, you said "Users are</p> <p>11 technically violating the terms and conditions of all</p> <p>12 sites when they use contact book imports...."</p> <p>13 Do you see that?</p> <p>14 A. Yep.</p> <p>15 Q. What did you mean when you said that?</p> <p>16 A. It's very simple. So when you use Firefox and</p> <p>17 if you give them -- if you -- Firefox asks you where you</p> <p>18 can store your user name and password. Technically</p> <p>19 you're giving your user name and password to Firefox.</p> <p>20 So technically Facebook could -- could sue Firefox for</p> <p>21 doing that. If you give your -- to Meebo and you give</p> <p>22 your account as not through the Facebook Connect,</p> <p>23 Facebook could say -- could go after -- or any -- any</p> <p>24 site could say you're violating the terms and</p> <p>25 conditions.</p> <p style="text-align: right;">Page 300</p>

<p>1 Q. Right. Because the terms and conditions say 2 don't give your password to other people? 3 A. You know, most -- most -- most of them say 4 that. And as I said earlier -- we've had this 5 conversation -- it's been almost standard practice for 6 ten years that you can give your -- you can give your 7 password to browsers, give it to other sites, and no 8 site to our -- to our knowledge, except for Facebook, 9 has ever -- you know, these issues have -- have ever 10 come -- come up with. But the terms -- that's why I 11 said, tech -- technically by -- you can say by, you 12 know, interpretation of sites if they wanted to they can 13 make that claim. 14 Q. But what was your reference here to contact 15 book imports? 16 A. Just saying contact book imports is another -- 17 another situation. So on Facebook when you want to 18 import your contacts from another site, you give your 19 user name and password. And then Facebook on many of 20 the sites goes and scrapes that site. Facebook is in -- 21 is in violation -- the user is in violation of the terms 22 and conditions. But, again, that site has to decide if 23 they want to -- to hold -- hold Facebook accountable or 24 not. Or any site. Google doing that or Power. 25 Q. And did you -- did you believe this fact that Page 301</p>	<p>1 Q. I'm going to state it again. 2 A. Please. 3 Q. I want you to listen really carefully to it. 4 A. Okay. 5 Q. Okay. Prior to launching the hundred by 6 hundred by hundred campaign, did you believe that users 7 are technically violating the terms and conditions of 8 all sites when they use contact book imports when they 9 give their password to Firefox? 10 MR. FISHER: Vague. Calls for legal 11 conclusion. Assumes facts not in evidence. Lacks 12 foundation. Go ahead. 13 THE WITNESS: I think my previous answer -- 14 and I'll answer it -- answer is technically based on -- 15 now, this is my answer. Is -- here. Technically -- and 16 that's why I use the word -- technically can be accused 17 for violating the terms if they give their password to 18 another site. So that includes -- that answers your 19 question and says not before or after I believe -- we 20 believe the same thing, so yes. 21 Q. BY MR. CHATTERJEE: Your views are unchanged 22 is my view. Your -- your view of this statement was the 23 same prior to the launch promotion as it was in January 24 10th -- 25 MR. FISHER: Same objection. Page 303</p>
<p>1 you say in here to be true prior to launching the -- the 2 100 by 100 by 100 launch campaign? 3 A. Whether importing contacts or? 4 Q. Just the exact sentence here. That -- let me 5 ask it -- let me ask it a little differently. 6 A. Yeah. 7 Q. Prior to -- to launching the hundred by 8 hundred by hundred launch campaign, did you believe that 9 users are technically violating the terms and conditions 10 of all sites when they use contact book imports when 11 they give their password to Firefox? 12 A. What I believe is that if -- if -- if you -- 13 if you want -- if a site decides -- in their 14 interpretation they can technically say that you put 15 your -- you put your thing into Firefox, therefore 16 Firefox knows your user name and password and you 17 violated it. Or it says here Facebook is violating 18 terms if they take the user name and password they go 19 access Google. This is a core of what we've always 20 believed. 21 Q. Okay. 22 A. Yeah. 23 Q. So but my question is different from what your 24 answer was. 25 A. Okay. Page 302</p>	<p>1 THE WITNESS: We believe -- we believe that -- 2 that site -- yeah, that any site can say you're 3 technically violating their terms if they want to. 4 Whether you agree or disagree is then open to dispute. 5 That's what we've always, you know, agreed. 6 Q. BY MR. CHATTERJEE: Well, but that isn't what 7 you said here. You said "Users are technically 8 violating the terms and conditions of all sites when 9 they use contact book imports." 10 A. I'm telling you what the -- what the content 11 and what I meant -- what I meant -- what I believe and 12 mean by that is that technically -- what I mean by 13 technically means that if you want to get technical, 14 every -- every single site on the web is -- can be -- 15 another site can claim the technicality on this issue. 16 Q. Right. Okay. 17 A. That doesn't -- you know, that's all I said. 18 That's all it meant. 19 Q. And -- and -- and so are you saying that you 20 meant something other than what you said here? 21 A. No. That's what I meant there. 22 Q. And has this view -- has this -- in your view, 23 just to make sure the record's clear, your view has been 24 the same as to this issue since before the launch 25 promotion was ever put in place? Page 304</p>

<p>1 A. My view is that -- my view -- to clarify, this</p> <p>2 is what I mean here -- this -- I believe it's the same.</p> <p>3 I don't believe my view has changed. This was in</p> <p>4 January of 2009. So it was at a later point. But I</p> <p>5 believe it's the same, which is any -- any site can</p> <p>6 technically make a claim that you're violating their</p> <p>7 terms and then it has to be, you know, worked out.</p> <p>8 MR. CHATTERJEE: Let's mark this as Exhibit</p> <p>9 224.</p> <p>10 (Plaintiff's Exhibit No. 224 marked for</p> <p>11 identification.)</p> <p>12 THE WITNESS: Okay.</p> <p>13 Q. BY MR. CHATTERJEE: Do you -- do you know what</p> <p>14 this document is?</p> <p>15 A. Yeah. It's our home page.</p> <p>16 Q. Okay. This was your home page at the time the</p> <p>17 launch promotion was going on?</p> <p>18 A. That's correct, yes.</p> <p>19 Q. Okay. And this Exhibit 224, who -- who -- who</p> <p>20 created this graphic on -- on the front associated --</p> <p>21 listing these different social networking web sites?</p> <p>22 A. We -- we did. Power.</p> <p>23 Q. And let me just go through the various things</p> <p>24 in this little star.</p> <p>25 A. Okay.</p> <p style="text-align: right;">Page 305</p>	<p>1 A. We don't have -- we don't have a specific</p> <p>2 signed agreement with these companies whether or not</p> <p>3 it's -- they authorized it, I don't know.</p> <p>4 Q. Yeah. Orkut had not specifically told --</p> <p>5 A. Yeah, that's correct.</p> <p>6 Q. -- Power --</p> <p>7 A. Orkut did not specifically say you can go put</p> <p>8 this logo on this site. That's correct.</p> <p>9 Q. Got to make sure the record's clear.</p> <p>10 A. Great.</p> <p>11 Q. Orkut had not told Power --</p> <p>12 A. That's correct.</p> <p>13 Q. -- that Power was allowed to display its logo</p> <p>14 on the home page?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. Same question for Myspace. Had Myspace</p> <p>17 at the time this screen was created --</p> <p>18 A. That's correct. Same -- same answer.</p> <p>19 Q. Okay. You got to wait for my question to</p> <p>20 finish.</p> <p>21 A. Okay.</p> <p>22 Q. I know it's been a long day.</p> <p>23 A. No worries.</p> <p>24 Q. Had Myspace specifically authorized Power to</p> <p>25 display their logo on the Power home page?</p> <p style="text-align: right;">Page 307</p>
<p>1 Q. This MSN, is that a -- a Microsoft logo?</p> <p>2 A. That's correct. That's not -- yeah, that's</p> <p>3 Microsoft.</p> <p>4 Q. Did -- at the time that this launch promotion</p> <p>5 started, had Microsoft authorized Power to use the</p> <p>6 Microsoft logo on its web site?</p> <p>7 A. So we didn't -- we didn't need authorization</p> <p>8 to --</p> <p>9 Q. No. My question was had they.</p> <p>10 A. No.</p> <p>11 Q. Okay. What about Orkut, had Orkut authorized</p> <p>12 Power to use their -- this is their logo, right?</p> <p>13 A. Yeah.</p> <p>14 Q. And had they authorized Power to use that name</p> <p>15 or use that logo on their web site? On the Power web</p> <p>16 site?</p> <p>17 A. I -- I don't know what -- what their rules are</p> <p>18 on -- on these things, on any of these issues. I mean,</p> <p>19 the logos. And --</p> <p>20 Q. To the best of your knowledge, did Orkut --</p> <p>21 A. I will -- I will just make one -- one</p> <p>22 statement that our view on this was we saw this being a</p> <p>23 standard practice across the web with the proper</p> <p>24 disclaimers and that -- that logos were used. So we --</p> <p>25 Q. Let me narrow the question down.</p> <p style="text-align: right;">Page 306</p>	<p>1 A. No.</p> <p>2 Q. And what about Facebook, had Facebook</p> <p>3 specifically authorized Power to display the Facebook</p> <p>4 logo on its -- on Power's home page?</p> <p>5 A. No.</p> <p>6 Q. And hi5, had hi5 authorized Power to display</p> <p>7 the hi5 logo on the Power home page?</p> <p>8 A. No. And you do see our disclaimer on the site</p> <p>9 there also which says that we are an independent company</p> <p>10 and not associated with Google, Facebook, Myspace, hi5,</p> <p>11 Yahoo!, or MSN.</p> <p>12 Q. I understand.</p> <p>13 A. Clear -- clear disclaimer that we are not</p> <p>14 associated with those companies.</p> <p>15 Q. Move to strike as nonresponsive. There's also</p> <p>16 a You Tube logo on here.</p> <p>17 A. Correct.</p> <p>18 Q. Had You Tube authorized Power to display its</p> <p>19 logo on the power.com home page?</p> <p>20 A. No. Not specifically.</p> <p>21 Q. On the sign in page here it says Power.com,</p> <p>22 slash, Facebook e-mail.</p> <p>23 A. Correct.</p> <p>24 Q. Do you see that?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 308</p>

<p>1 Q. Why did it only talk about Facebook and Power 2 e-mails in that -- 3 A. Because on that specific screen shot it's -- 4 it's -- the person has -- has clicked on the Facebook 5 account. If they click on Orkut, that changes to Orkut. 6 Q. Got it. So it would be however the sign in 7 protocol was? 8 A. It switches to whichever account they want to 9 log in with. 10 Q. How did you -- how did Power learn what the 11 sign in protocol was for these various web sites? 12 A. What do you mean "the sign in protocol"? 13 Q. Well, for example, in the Facebook box it says 14 Power, slash, Facebook e-mail and then a password, 15 right? 16 A. Yes. 17 Q. That's the way that someone would typically 18 sign in to Facebook, correct? 19 A. Correct. 20 Q. That would be different potentially than the 21 way you signed in to Orkut, Myspace, or hi5? 22 A. Yeah. Typically on -- on their web sites 23 there's a -- there's a standard, they -- they -- when a 24 user has -- on their log in page they have a -- they ask 25 user name and password or e-mail and pass -- user name</p> <p style="text-align: right;">Page 309</p>	<p>1 they ask you -- they ask you if you want -- if you want 2 to do it. But then in the future, then they do the log 3 in for you. Because Firefox stores it on their -- on -- 4 on -- stores that information. You authorize -- 5 Q. Is that stored on the Firefox servers or 6 natively in your computer? 7 A. Well, Firefox has a -- a browser. I don't 8 know if they store it. I know that most companies -- 9 every company has a different policy on that issue. 10 Meebo, for example, stores the passwords. Firefox, I -- 11 since they have it on your -- on your browser, they can 12 -- they can store it. I don't know if they back it up. 13 Every company's got a different policy on that. 14 Q. Okay. 15 A. It's -- 16 Q. So you -- you don't know how Firefox stores 17 it? 18 A. No. I know every company has a different 19 policy. 20 Q. Okay. When -- when Power launch -- launched 21 the launch promotion in 2008, did it -- did it have the 22 money to pay people if they invited a hundred -- a 23 hundred users? 24 A. We did pay -- we did -- we did people -- we 25 did pay people. Yes.</p> <p style="text-align: right;">Page 311</p>
<p>1 -- e-mail and password. 2 Q. Right. So how was it that Power figured out 3 which of those kind of sign in protocols with the 4 different social networking web sites -- how -- how to 5 implement that on this screen? 6 A. I assume we looked -- we looked at their web 7 site. 8 Q. It would be by reviewing the web site? 9 A. We would look at the home page of the site. 10 Q. Testing it? 11 A. Well, we -- that's what -- when we built a 12 Power -- a Power adapter, which is like a Power -- Power 13 log in for a site, it was built basically on looking -- 14 what a user -- what a user is able to do and being able 15 to automate doing that on behalf of the user. 16 Q. Is that the way Firefox does it? 17 A. Firefox pops up a -- a box. Same -- similar 18 type of thing. And says you can -- you can -- because 19 it's a browser, so it's not -- it's -- they have it from 20 -- yeah, from the browser interface it pops up and you 21 can enter your user name and password. And then it 22 stores the user name and password. 23 Q. Doesn't -- doesn't it just say do you want me 24 to remember this? 25 A. Well, it's -- it's the same. Yeah. They --</p> <p style="text-align: right;">Page 310</p>	<p>1 Q. No. No. I know. But did it have the money 2 to do it? 3 A. Yes. It was a maximum liability of -- of 4 \$10,000. The first hundred people who reach -- reach a 5 hundred friends get a hundred dollars. So if the fact 6 that we had the ability to pay \$10,000, yes. 7 Q. Do you know of any reason why Mr. Herrera 8 would say we started a campaign without having the prize 9 to give? 10 A. I don't know why. 11 Q. Who is Cornelius Conboy? 12 A. He was another person working at the company 13 on the -- on the administration, operations. 14 Q. Do you have any basis to understand why he'd 15 say regardless, I'm not sure what the proper way to 16 start a campaign like this since we do not have the 17 10,000 in prize money? 18 A. I think he was just asking do we -- do we -- 19 do we have \$10,000 in prize money. And my answer was 20 yes. 21 MR. CHATTERJEE: Okay. Let's -- let's mark 22 this. 23 THE WITNESS: Those are financial -- financial 24 decisions. And obviously the best answer is we did pay 25 -- we did pay out the prize to all the people that</p> <p style="text-align: right;">Page 312</p>

<p>1 achieved it, so. I think it speaks for itself.</p> <p>2 (Plaintiff's Exhibit No. 225 marked for</p> <p>3 identification.)</p> <p>4 THE WITNESS: Okay. Go ahead.</p> <p>5 Q. BY MR. CHATTERJEE: So in this e-mail Mr.</p> <p>6 Conboy is not asking whether you have money or not.</p> <p>7 He's saying that you don't have the 10,000, correct?</p> <p>8 A. Well, he's -- he's making a comment. He's</p> <p>9 basically asking what are our priorities. And as the</p> <p>10 CEO, I have to decide -- you know, I mean, everybody has</p> <p>11 different opinions on where -- where we should -- should</p> <p>12 we budget this \$10,000 to marketing, should we budget it</p> <p>13 to a new program, or should we budget it to whatever.</p> <p>14 And so I think that's what he was -- he was looking for</p> <p>15 clarification.</p> <p>16 Q. And what was his role in the company again?</p> <p>17 A. He was an administration -- administration</p> <p>18 manager.</p> <p>19 Q. And what does an administration manager do?</p> <p>20 A. He was, like, helping with a lot of the day to</p> <p>21 day, you know, internal administration of, like, non --</p> <p>22 non like -- office administration and these kind of --</p> <p>23 Q. Why --</p> <p>24 A. -- helping with, like --</p> <p>25 Q. Why --</p> <p style="text-align: right;">Page 313</p>	<p>1 Q. Mr. Santos is, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And as of March 29th, 2009, had the Power</p> <p>4 users that had won the hundred by hundred by hundred</p> <p>5 campaign been paid?</p> <p>6 A. I believe they were paid sometime in April.</p> <p>7 And I believe that the terms and the conditions said</p> <p>8 that we had -- you know, it was way within the time that</p> <p>9 we had said that we would pay the users.</p> <p>10 Q. Okay.</p> <p>11 A. So they just wanted to clarify. They don't --</p> <p>12 this -- they were just getting -- naturally at this time</p> <p>13 we were making priorities on where we want to pay costs</p> <p>14 so that --</p> <p>15 Q. Was -- was there any particular reason why you</p> <p>16 waited?</p> <p>17 A. Well, I think that we had fired many people at</p> <p>18 that time and we had reduced costs. So they wanted to</p> <p>19 understand if this was going to be paid. And I said</p> <p>20 yes. And the fact is it was paid. It was made to be a</p> <p>21 priority to be paid as we had planned.</p> <p>22 MR. CHATTERJEE: Let's mark this as 227.</p> <p>23 (Plaintiff's Exhibit No. 227 marked for</p> <p>24 identification.)</p> <p>25 THE WITNESS: Okay.</p> <p style="text-align: right;">Page 315</p>
<p>1 A. -- budget -- budgets and those kind of things.</p> <p>2 Q. So he was a finance person?</p> <p>3 A. He was a -- he was just a -- basically an</p> <p>4 administration manager. I'd call him administration</p> <p>5 manager.</p> <p>6 Q. Did he report to you?</p> <p>7 A. He reported to me.</p> <p>8 Q. There were only a few people that reported to</p> <p>9 you in the company, right?</p> <p>10 A. That's correct. There were like five. Like</p> <p>11 five people.</p> <p>12 Q. Was he a senior-level executive?</p> <p>13 A. He was a -- he was a senior level. At that</p> <p>14 time we didn't have -- you know, we didn't -- he was</p> <p>15 kind of -- he was the person that on finance and</p> <p>16 administration issues at that time. He was the person</p> <p>17 that I -- that I was -- that was -- was reporting to me.</p> <p>18 MR. CHATTERJEE: Let's mark this as 226.</p> <p>19 (Plaintiff's Exhibit No. 226 marked for</p> <p>20 identification.)</p> <p>21 THE WITNESS: Okay.</p> <p>22 Q. BY MR. CHATTERJEE: Okay. This is an e-mail</p> <p>23 between Bruno Carvalho and Eric Santos and he's also</p> <p>24 forwarding the e-mail to you.</p> <p>25 A. Yeah.</p> <p style="text-align: right;">Page 314</p>	<p>1 Q. BY MR. CHATTERJEE: Okay. The document I've</p> <p>2 given you as Exhibit 227, does this refresh your</p> <p>3 recollection that -- that potentially as late as May</p> <p>4 14th, 2009, the winners of the hundred by hundred by</p> <p>5 hundred campaign had not yet been paid?</p> <p>6 A. Yeah. If I remember correctly, the -- after</p> <p>7 the -- the end, we had, like, three months or something</p> <p>8 to pay them. And so we -- we decided, like, a bill</p> <p>9 date, that it was not -- you know, we didn't have to pay</p> <p>10 it in a day, even though some users would have liked to</p> <p>11 have received their money earlier. And -- and this was</p> <p>12 I think the final stage when -- when Felipe had been</p> <p>13 authorized to go ahead and -- and pay it. And he was</p> <p>14 contacting my -- my assistant who was helping with some</p> <p>15 things to -- to complete the payments. And I think</p> <p>16 shortly -- I believe it was -- if I'm not mistaken, I</p> <p>17 believe it was paid around that time.</p> <p>18 MR. CHATTERJEE: So this is 228.</p> <p>19 (Plaintiff's Exhibit No. 228 marked for</p> <p>20 identification.)</p> <p>21 THE WITNESS: Okay.</p> <p>22 Q. BY MR. CHATTERJEE: Mr. Vachani, what I've</p> <p>23 handed you as Exhibit No. 228 is a -- a red lined</p> <p>24 version of power.com's terms of use. Do you see that?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 316</p>

<p>1 Q. It says in the top corner last updated May 26, 2 2009. 3 A. Okay. 4 Q. Do you see that? Do you know why in May 26, 5 2009, Power was changing its terms of use or considering 6 changing its terms of use? 7 A. Sites change and update their terms of use on 8 a regular basis. I don't know what changes were made 9 that date. But sites -- obviously I'm sure that you -- 10 if I -- if it was -- it was a -- whatever it was, I'm 11 sure it was either -- it was either an e-mail -- if it 12 was a major change. And if not it was -- you know, I 13 have no idea what the change was. It's not a major 14 issue. 15 Q. So it was just kind of an ordinary course of 16 business? 17 A. I have -- I mean, all I know is terms and 18 conditions were updated on a regular basis. And, like I 19 said, it was a few years ago. So I had -- 20 Q. All right. Do you know if this new one was 21 ever -- if there was ever a new terms of service in the 22 May time frame of -- 23 A. I have no idea. But anything in my e-mail -- 24 you would have -- if -- if it was major or whatever, 25 like, on something that they felt was necessary to</p> <p style="text-align: right;">Page 317</p>	<p>1 was our terms and conditions, then that's correct. 2 Q. You don't recall any specific discussions 3 about that? 4 A. I don't recall them. But again, this is not 5 -- terms and conditions are usually not -- in most cases 6 they're -- they're ongoing, you know, things. 7 Q. Right. Do you recall any discussions about 8 power.com's terms of use and restrictions on users? 9 A. I remember having -- I've had discussions on 10 the issue. And you probably have e-mails. If it was 11 anything that was really substantial, it would probably 12 be in an e-mail of my comments and thoughts on it. 13 Q. So other than reflected in the e-mail, you 14 don't have any specific recollections? 15 A. No, I don't have any specific recollections. 16 Right. 17 MR. CHATTERJEE: I'm going to go down memory 18 lane again. Exhibit 229. 19 (Plaintiff's Exhibit No. 229 marked for 20 identification.) 21 Q. BY MR. CHATTERJEE: So, Mr. Vachani, what I've 22 handed you as Exhibit 229 is a chat log between you and 23 somebody named Greg. 24 A. Okay. 25 Q. Do you know who Greg is?</p> <p style="text-align: right;">Page 319</p>
<p>1 update me, it would have been in my e-mail box saying, 2 you know, this is what the updates are or whatever. If 3 not, if it was a minor change that it was felt -- where 4 they -- the manager felt in discretion it was not 5 needed, they wouldn't have updated me. It's a pretty 6 standard issue. 7 Q. If you can turn to the one, two -- the third 8 page. 9 A. Okay. 10 Q. In about the middle of the page it says -- 11 there's a section entitled "Examples of incorrect use 12 cited above includes..." -- 13 A. On which page? Second or third? 14 Q. This is on the third page about halfway down. 15 A. Okay. 16 Q. Do you recall any discussions at Power about 17 modifying the terms of service that would require -- or 18 that would identify as an incorrect use harvesting or 19 collecting personal information of other power.com users 20 or using or disclosing personal information of power.com 21 users other than as permitted by the power.com privacy 22 policy? 23 A. If that was in our terms and conditions, then 24 yes. Of course. I don't -- again, I don't -- I don't 25 remember the specific conversation. But if -- if this</p> <p style="text-align: right;">Page 318</p>	<p>1 A. Yeah, Greg was a -- as I said, 2005 was two 2 years or -- one or two years before, you know, Power had 3 done anything. 4 Q. I understand. 5 A. That's correct. 6 Q. Who's Greg? What is his last name? 7 A. Greg. I don't remember his last name. But he 8 was a technical -- like, just a technical guy. 9 Q. Did he ever work for Power? 10 A. Never worked for Power. 11 Q. Okay. 12 A. I had discussions with him at times early on 13 before -- way before in the early days about -- about 14 doing some work. 15 Q. So in -- 16 A. Do you mind if I read this real quick? 17 Q. Sure. 18 A. Okay. 19 Q. This is a instant message chat log between you 20 and Greg, correct? 21 A. Correct. 22 Q. And why -- why was it you were talking to Greg 23 about building an engine to grab the entire content of 24 Orkut and store it in XML and then let people's entire 25 content be activated instantly when they arrive on the</p> <p style="text-align: right;">Page 320</p>

<p>1 site?</p> <p>2 A. Sure. So as I mentioned in very exploratory</p> <p>3 just ideas, we were looking at ways to increase</p> <p>4 conversion rates in -- in -- in exporting data. And we</p> <p>5 were trying to say that what are the best ways. Is it</p> <p>6 better to -- to do what, you know, Google or other sites</p> <p>7 do where they cache -- cache sites on the web and then</p> <p>8 when you access it it's much faster or do it all in real</p> <p>9 time. So when a user says grab all of my content.</p> <p>10 So part of -- part of the goal there was to --</p> <p>11 was a hypothetical exercise to understand if there are</p> <p>12 ways to speed up. Because importing an address book is</p> <p>13 one -- one situation. It's a lot faster. But importing</p> <p>14 hundreds of pages where a user says that -- so this was</p> <p>15 a hypothetical kind of discussion or exercise to</p> <p>16 understand what are the different ways if you were going</p> <p>17 to do a very -- a very fast virally-growing campaign</p> <p>18 that was going to have a million users exporting their</p> <p>19 data. So we were exploring -- it was really a technical</p> <p>20 exercise on no specific --</p> <p>21 Q. So in this chat log you also say "also, when</p> <p>22 activating the engine to grab all the data, we need to</p> <p>23 have a strategy that lets us grab all the data without</p> <p>24 being detected."</p> <p>25 Why did it matter to you that you would be</p> <p style="text-align: right;">Page 321</p>	<p>1 rather than, you know, just --</p> <p>2 Q. So, Mr. Vachani, you'd agree with me that you</p> <p>3 said here "...we need to have a strategy that lets us</p> <p>4 grab all the data without being detected"?</p> <p>5 A. That's -- that correct.</p> <p>6 Q. Okay.</p> <p>7 A. So detected means if -- if -- if you're going</p> <p>8 too fast, there's standard -- there's standard blocks or</p> <p>9 standard systems that say slow down. And so the</p> <p>10 question was are there ways -- are there ways to slow it</p> <p>11 down, is it ways to cache data. It was a - again, a</p> <p>12 hypothetical exercise.</p> <p>13 Q. Right. So you wanted to avoid being detected</p> <p>14 so you wouldn't be slowed down or blocked?</p> <p>15 A. I was -- again, it was a -- it was not about</p> <p>16 what we wanted to do. This was an academic exercise,</p> <p>17 you know, that we were -- that we were discussing, you</p> <p>18 know, the issues relating -- because this was all</p> <p>19 uncharted territory exporting -- exporting contacts</p> <p>20 had existed, but exporting profiles in a -- in a single</p> <p>21 step is a hundred times more data. It's the same</p> <p>22 concept. And so this is why we were just exploring --</p> <p>23 Q. Let's go to the next page. Next page at the</p> <p>24 top "Steve says" -- that's you, right, Steve?</p> <p>25 A. Yep.</p> <p style="text-align: right;">Page 323</p>
<p>1 able to grab all the data without being detected?</p> <p>2 A. Typically, as I mentioned in the past, when --</p> <p>3 when -- any site, if you access at too fast of a rate,</p> <p>4 there are automatic triggers that will -- will -- that</p> <p>5 -- that-- that they don't know -- they basically have</p> <p>6 automatic triggers to -- to slow that down. So that's</p> <p>7 why the whole idea was if you're -- if you're going --</p> <p>8 if you have a -- a very fast virally-growing campaign</p> <p>9 where users are, say, exporting data, yeah, you -- there</p> <p>10 are -- there might be limitations on how fast you can</p> <p>11 go.</p> <p>12 So this was a hypothetical exercise two years</p> <p>13 before the company that had nothing to do with Power.</p> <p>14 That was just trying to understand the technical</p> <p>15 constraints necessary in importing massive amounts of</p> <p>16 data in a -- in a campaign that was growing very fast</p> <p>17 virally. Because ultimately the goal of, you know, any</p> <p>18 kind of project is --</p> <p>19 Q. Was one of the goals to avoid detection to</p> <p>20 allow you to export all that data?</p> <p>21 A. Not to avoid detection. It was to understand</p> <p>22 what kind of -- this was a -- a hypothetical exercise to</p> <p>23 understand what kind of -- what kind of issues are</p> <p>24 possible when you're dealing with mass amounts of -- if</p> <p>25 you're growing millions -- millions of users in a week</p> <p style="text-align: right;">Page 322</p>	<p>1 Q. "we will have to have a clever ip rotating</p> <p>2 system and other techniques. this is something we were</p> <p>3 just starting to think about."</p> <p>4 Let me start with who is the "we"?</p> <p>5 A. I don't know. Whoever the technical guys --</p> <p>6 this is -- this is before Power. I was working on --</p> <p>7 you know, so I was just -- I must have had some contract</p> <p>8 program guys that were just exploring -- we were just</p> <p>9 exploring technical ideas on data extraction.</p> <p>10 Q. And this hypothetical concept that you were</p> <p>11 developing you felt needed a clever IP rotating system?</p> <p>12 A. Well, we were trying to figure out what are</p> <p>13 the different ways to export large amounts of data</p> <p>14 when -- you know, if a user says import my whole social</p> <p>15 network into -- import my whole social network instead</p> <p>16 of just importing my contacts. So this was again an</p> <p>17 academic exercise to -- like, think about all the</p> <p>18 different issues involved in exporting entire profiles</p> <p>19 with -- with photos and everything else.</p> <p>20 Q. Do you mean to suggest that the statement made</p> <p>21 there means something other than what it says?</p> <p>22 A. What does it say?</p> <p>23 Q. "we will have to have a clever ip rotating</p> <p>24 system and other techniques."</p> <p>25 A. Well, I think that was -- that was one of the</p> <p style="text-align: right;">Page 324</p>

<p>1 -- one of the ideas that -- you know, that we explored</p> <p>2 is an IP rotating system is potentially one way to -- to</p> <p>3 be able to access larger amounts of data.</p> <p>4 Q. Without being slowed down and blocked?</p> <p>5 A. Without being slowed down, correct.</p> <p>6 Q. Then if you turn to the third page, there's a</p> <p>7 section that says "Steve says: assuming the IP address</p> <p>8 was dynamically changing, is the danger" that "pattern</p> <p>9 that would be easily recognized?"</p> <p>10 Do you see that?</p> <p>11 A. Yep.</p> <p>12 Q. Okay. Could you explain to me what you meant</p> <p>13 by that question?</p> <p>14 A. Yeah. I think the whole -- the whole exercise</p> <p>15 was to try to understand when you're dealing with</p> <p>16 exporting large amounts of data what are -- I mean,</p> <p>17 that's what the whole discussion was just are there --</p> <p>18 what are the ways that you could -- you could address</p> <p>19 this hypothetically.</p> <p>20 Q. And at least as early as 2005 you were aware</p> <p>21 that one of the ways that you could try and address this</p> <p>22 problem was by -- by dynamically rotating IP addresses?</p> <p>23 A. Yeah. It says, as we've mentioned, we've --</p> <p>24 we have built -- it's a way that has -- has proven to be</p> <p>25 useful.</p> <p style="text-align: right;">Page 325</p>	<p>1 different techniques for spidering and -- I mean,</p> <p>2 that's -- that's -- that's an evolved process. So...</p> <p>3 Q. Is the -- is the rotating IP technology</p> <p>4 something that could be characterized as a robot?</p> <p>5 A. It's not a robot, no.</p> <p>6 Q. Okay.</p> <p>7 A. A robot is typically a -- when a script or</p> <p>8 something that does something -- that does something</p> <p>9 that is -- it's instructed to do.</p> <p>10 Q. There's also a statement here "...Orkut may</p> <p>11 impose limits on the number of page requests from a</p> <p>12 single IP address."</p> <p>13 A. Yeah.</p> <p>14 Q. Do you see that? That's the same thing we</p> <p>15 talked about --</p> <p>16 A. Same thing. We said in general it's standard</p> <p>17 practice for whatever the matter -- they don't really</p> <p>18 know -- it's just like because in the past there have</p> <p>19 been things like DOS attacks where -- you know what a</p> <p>20 D-O-S attack is when -- when a company sends 5,000</p> <p>21 servers to attack your site to try -- with the purpose</p> <p>22 of causing harm. Not with the purpose of, you know -- I</p> <p>23 mean, Google -- when Google comes in your site, their</p> <p>24 purpose is not to cause harm. When a data -- there are</p> <p>25 data companies that go out and mine data on the web,</p> <p style="text-align: right;">Page 327</p>
<p>1 MR. CHATTERJEE: 230.</p> <p>2 (Plaintiff's Exhibit No. 230 marked for</p> <p>3 identification.)</p> <p>4 THE WITNESS: Okay.</p> <p>5 Q. BY MR. CHATTERJEE: Who is Paul King?</p> <p>6 A. He was another technical person that I -- that</p> <p>7 I -- on this exercise that I contacted.</p> <p>8 Q. If you look at the very end of this e-mail</p> <p>9 string --</p> <p>10 A. Yep.</p> <p>11 Q. -- Mr. King tells you Orkut's -- "Orkut's</p> <p>12 license agreement" expressly "forbids robots, so they</p> <p>13 are onto it and may be" do -- "doing things to prevent</p> <p>14 automated retrieval."</p> <p>15 Do you see that?</p> <p>16 A. Okay.</p> <p>17 Q. Do you know if that was a true or untrue</p> <p>18 statement?</p> <p>19 A. I have no idea. I'm assuming that -- you</p> <p>20 know, robots in general are -- are things that, you</p> <p>21 know, some -- data -- data extraction and caching -- for</p> <p>22 example, when Google goes and caches the web and does</p> <p>23 sites, there have been -- for a long time their robots</p> <p>24 would be blocked. And Google over the years, you know,</p> <p>25 they gained both legitimacy and gained -- created</p> <p style="text-align: right;">Page 326</p>	<p>1 publicly-available data. All this is talking about --</p> <p>2 Q. Yeah. But my -- my -- my question was a</p> <p>3 little simpler than that.</p> <p>4 A. Yeah.</p> <p>5 Q. Is dynamically rotating the IP addresses in</p> <p>6 order to access the web site something that would be</p> <p>7 considered a robot?</p> <p>8 A. No.</p> <p>9 Q. Okay. Is a robot a -- a online tool to gather</p> <p>10 information from -- from a web site?</p> <p>11 A. A robot as far as I understand it is just a --</p> <p>12 a -- technically something that I can refer to,</p> <p>13 something that's instructed to do something either --</p> <p>14 usually through a script.</p> <p>15 Q. So why wouldn't rotating IP addresses fall</p> <p>16 into that definition?</p> <p>17 A. Well, an IP is not -- that's not a robot.</p> <p>18 That's just a IP address with the servers changing.</p> <p>19 Q. Okay. So if I wrote a script to rotate IP</p> <p>20 addresses --</p> <p>21 A. If you wrote a script to rotate, that could be</p> <p>22 an action of -- of a robot.</p> <p>23 Q. That would -- that could be an action --</p> <p>24 A. That could be an action of a robot.</p> <p>25 Q. So just the -- having multiple IP addresses</p> <p style="text-align: right;">Page 328</p>

<p>1 standing alone isn't a robot. But if I wrote a script</p> <p>2 to move from IP address to one -- to another IP address</p> <p>3 --</p> <p>4 A. If you wrote a script to do anything in a</p> <p>5 site, you know --</p> <p>6 Q. That would be a robot.</p> <p>7 A. -- that could be considered -- so, as I said,</p> <p>8 when Facebook goes and scrapes a site and takes the</p> <p>9 stuff, that's a robot. In my definition that's a robot</p> <p>10 going as a robot script that's going and accessing</p> <p>11 contacts with or without the permission of that site.</p> <p>12 Q. All right. And so was -- would you</p> <p>13 characterize the script that allowed for a dynamic</p> <p>14 assignment of IP addresses that was implemented by Power</p> <p>15 as a robot?</p> <p>16 A. No, that's not a robot.</p> <p>17 Q. Why not?</p> <p>18 A. That was a -- that's a system that just</p> <p>19 updated IPs. It wasn't going out and doing things on --</p> <p>20 you know, a robot is -- is something that's going out on</p> <p>21 a site and doing something. Changing -- having an IP --</p> <p>22 IP address update is not a -- is a -- is a different</p> <p>23 system. It's not a robot PowerScript.</p> <p>24 Q. Now, you say here in your -- in your response</p> <p>25 to Mr. King "...our plans" is "to have rotating IP</p> <p style="text-align: right;">Page 329</p>	<p>1 their whole social network. Especially if -- you know,</p> <p>2 if -- if, you know, if -- if -- if the site didn't allow</p> <p>3 that much data to be extracted, even if the user wanted</p> <p>4 it.</p> <p>5 MR. CHATTERJEE: This is Exhibit 231.</p> <p>6 (Plaintiff's Exhibit No. 231 marked for</p> <p>7 identification.)</p> <p>8 THE WITNESS: Okay.</p> <p>9 Q. BY MR. CHATTERJEE: So this is an e-mail from</p> <p>10 Eric Santos to you dated August 31st, 2006.</p> <p>11 A. Correct.</p> <p>12 Q. It appears that Orkut was blocking Power in</p> <p>13 2006?</p> <p>14 A. Power didn't exist. This was -- this was the</p> <p>15 -- we were playing around with a -- another -- another</p> <p>16 -- just the concepts of accessing -- we were just --</p> <p>17 this is the beginnings of -- of -- of Power. But the</p> <p>18 earlier applications on -- on ways where users want to</p> <p>19 -- we had different apps. When they would access the</p> <p>20 site the user would say I want to access by messaging</p> <p>21 and send messaging apps or I want to create a browser</p> <p>22 that browses. And so he's commenting that irrelevant of</p> <p>23 the -- irrelevant of what the application is, sites have</p> <p>24 standard things in place that, you know, these are --</p> <p>25 these are kind of standard things when, you know --</p> <p style="text-align: right;">Page 331</p>
<p>1 addresses so we could have 10,000 or even more IP</p> <p>2 addresses throughout the process."</p> <p>3 A. So in -- in this time in 2005, the whole</p> <p>4 concept of rapid data -- data extraction or exporting --</p> <p>5 again, this was a hypothetical exercise because no one</p> <p>6 had ever exported -- people had exported context, but no</p> <p>7 one had ever exported entire social -- social -- where</p> <p>8 you could -- entire social graphs. So this was again a</p> <p>9 hypothetical exercise. Because if you start growing</p> <p>10 virally -- because if you are able to achieve this and</p> <p>11 start growing even faster, what would be the issues that</p> <p>12 you would have to face in dealing with the same type of</p> <p>13 exports, but exporting as we -- you saw the exercise we</p> <p>14 went to contact --</p> <p>15 Q. Right. But this was the same sort of issue</p> <p>16 where having rotating IP addresses was a tool that you</p> <p>17 were considering using in order to avoid being blocked</p> <p>18 or slowed down in the same way we discussed with those</p> <p>19 other documents.</p> <p>20 A. To avoid -- as I -- it would be -- it would be</p> <p>21 a way to -- to extract -- if a user said I want to</p> <p>22 extract my data and that -- that was what the purpose</p> <p>23 there was. If a user says I want to import my whole</p> <p>24 social network, what -- what are the technical issues</p> <p>25 that would be encountered for a user wanting to access</p> <p style="text-align: right;">Page 330</p>	<p>1 usually -- they were originally built for spiders or</p> <p>2 things that, you know, not --</p> <p>3 Q. Yeah, I understand the reason --</p> <p>4 A. Yeah.</p> <p>5 Q. -- that -- that you believe they were built.</p> <p>6 A. Yeah.</p> <p>7 Q. But there was a situation where Orkut was --</p> <p>8 was blocking something you and Mr. Santos were trying to</p> <p>9 do, right?</p> <p>10 A. There was this -- correct. Yeah.</p> <p>11 Q. And what was torperkut?</p> <p>12 A. Torperkut was just another -- it was -- it was</p> <p>13 one -- one of the apps. We had many different apps that</p> <p>14 we were playing with.</p> <p>15 Q. What did torperkut do?</p> <p>16 A. It was a -- it was an app where you could --</p> <p>17 if you wanted to have -- instead of -- you know, right</p> <p>18 now today when you want to send a message on Facebook,</p> <p>19 you can cc friends. Back then you couldn't cc. If you</p> <p>20 wanted to send a message you were writing and cc it to</p> <p>21 40 friends, you would have to send 1 one by one. So it</p> <p>22 was an app that allowed you to cc a friend -- copy 40</p> <p>23 friends on the same message instead of having to do it</p> <p>24 manually.</p> <p>25 Q. And was -- was one of the solutions Mr. Santos</p> <p style="text-align: right;">Page 332</p>

<p>1 explored was using multiple IPs to access Orkut?</p> <p>2 A. I believe -- I believe so.</p> <p>3 (Plaintiff's Exhibit No. 232 marked for</p> <p>4 identification.)</p> <p>5 Q. BY MR. CHATTERJEE: So, Mr. Vachani, who was</p> <p>6 Kiran Inampudi?</p> <p>7 A. He was another just technical person that --</p> <p>8 that I -- I had -- was speaking to on different</p> <p>9 technical stuff at that time.</p> <p>10 Q. Now, at this point in time there was an e-mail</p> <p>11 address powerscrap.com?</p> <p>12 A. Correct.</p> <p>13 Q. Was -- had Power Ventures been formed at this</p> <p>14 point in time?</p> <p>15 A. It was -- I think Power Ventures was formed</p> <p>16 that -- that month. That was basically around the month</p> <p>17 November, December, so.</p> <p>18 Q. So this was a -- a document that was -- was</p> <p>19 it -- was it about activities related to what Power</p> <p>20 Ventures was starting to do?</p> <p>21 A. Let me see. I believe this conversation was</p> <p>22 dealing with, you know, this -- this IP rotation system</p> <p>23 that we were -- that we had. This was in the early days</p> <p>24 of, you know, addressing issues relating to rotating</p> <p>25 IPs, IP addresses.</p> <p style="text-align: right;">Page 333</p>	<p>1 kind of conversations that we had with most sites. And</p> <p>2 then they realized, okay, these guys are a</p> <p>3 venture-funded company, they're -- they have users that</p> <p>4 are involved, they're -- they're providing services to</p> <p>5 the users, they -- these are the issues. And that's the</p> <p>6 kind of things that most civilized companies that we had</p> <p>7 conversations with had --</p> <p>8 Q. When was the Amazon solution adopted by Power</p> <p>9 Ventures?</p> <p>10 A. I think Amazon was one of many. That's just</p> <p>11 -- because they -- they -- later on they came in and</p> <p>12 they had many -- they had unlimited IP addresses. So it</p> <p>13 was instead of having, you know, many different I -- you</p> <p>14 know.</p> <p>15 Q. Was it before or after the launch promotion</p> <p>16 started?</p> <p>17 A. I believe it was before the Amazon. We had</p> <p>18 been working on that, you know, before.</p> <p>19 Q. Okay. But -- but was it -- was the Amazon</p> <p>20 solution actually employed before or after the launch --</p> <p>21 A. I don't know the exact answer to that, but I</p> <p>22 believe -- I believe -- I believe it was -- it was -- it</p> <p>23 was employed before.</p> <p>24 Q. Okay. And what about -- was that applied</p> <p>25 across the board for all of the Power activities or was</p> <p style="text-align: right;">Page 335</p>
<p>1 Q. And was that related to something that Power</p> <p>2 Ventures was trying to do?</p> <p>3 A. Again, Power Ventures had -- this -- this</p> <p>4 issue of scalability of dealing with access of data was</p> <p>5 -- was an issue that we were -- we were -- we were</p> <p>6 exploring to try to understand. So this was just</p> <p>7 another conversation on that issue.</p> <p>8 Q. Right. And -- and -- and again, it was the</p> <p>9 same sort of problem as we talked about earlier where</p> <p>10 you were worried about access getting slowed or being</p> <p>11 blocked?</p> <p>12 A. So we were -- we were looking. If we have a</p> <p>13 Power browser and it's actually -- I mean, everything</p> <p>14 relating to this platform, if you -- the speed at which</p> <p>15 you access, we were exploring every possible kind of</p> <p>16 issue. So there were a lot of academic exercises that</p> <p>17 went into understanding, you know, how the sites deal</p> <p>18 with -- they -- you know, we're a new company, a new</p> <p>19 site. They don't -- they don't know your -- if -- if</p> <p>20 you're friendly, if you're user generated. They don't</p> <p>21 know any of these things. So typically until they</p> <p>22 know -- and that's historically, as I mentioned, most of</p> <p>23 our conversations when we were a new site, they'd say</p> <p>24 who are you, what is your purpose, are you -- are you</p> <p>25 fishing, are you user generated. We -- these are the</p> <p style="text-align: right;">Page 334</p>	<p>1 it --</p> <p>2 A. Well, this IP address rotation, just because</p> <p>3 of -- in whatever access to a site, whether with a</p> <p>4 browser -- any type of access, not just -- this issue</p> <p>5 crossed across any kind of activity that you're doing</p> <p>6 when you're having -- whenever you're having scripts</p> <p>7 dealing with -- with a site. I mean, I'm sure that</p> <p>8 Facebook went through this issue when they were</p> <p>9 accessing -- when -- when users were accessing sites</p> <p>10 and -- and if they had too many accesses -- these are</p> <p>11 standard -- standard issues. So we were trying to just</p> <p>12 -- this -- all this exploration was trying to</p> <p>13 understand, what are the kind of issues that involve</p> <p>14 when you have too many accesses. Because sites don't</p> <p>15 know what you are. And until they know what you are,</p> <p>16 you know, they --</p> <p>17 Q. They may or may not let you in.</p> <p>18 A. They may have automatic -- most of the cases,</p> <p>19 they were automatic detection systems that stopped</p> <p>20 things at too fast of a speed. You know, if it --</p> <p>21 because traditionally those -- those are the same --</p> <p>22 those are similar to people that have different</p> <p>23 intentions. Those are not -- that are not maybe there</p> <p>24 to -- for users to get their own data. They might be,</p> <p>25 you know, trying other types of things like trying to</p> <p style="text-align: right;">Page 336</p>

<p>1 break in -- break into. So they're completely different</p> <p>2 issues, but the -- but the issues might -- might, you</p> <p>3 know, be related.</p> <p>4 Q. But -- but the idea of having dynamically</p> <p>5 rotating IP addresses was something that was implemented</p> <p>6 by Power before the launch promotion; is that fair?</p> <p>7 A. Yeah. I mean, I think we've said this over</p> <p>8 and over and over again that Power has -- Power already</p> <p>9 had an automatic IP rotation system, as you can see, for</p> <p>10 a long time back. It wasn't a concept that appeared the</p> <p>11 day of Facebook. Obviously it was an issue that -- that</p> <p>12 affected so many -- so many activities of our -- our</p> <p>13 browser, our PowerScript language, our Power everything.</p> <p>14 Because it was -- it was something very new and</p> <p>15 innovative.</p> <p>16 MR. CHATTERJEE: Let's mark this as 233.</p> <p>17 (Plaintiff's Exhibit No. 233 marked for</p> <p>18 identification.)</p> <p>19 THE WITNESS: Okay.</p> <p>20 Q. BY MR. CHATTERJEE: So do you recognize the</p> <p>21 document that I just handed you --</p> <p>22 A. Yes.</p> <p>23 Q. -- that's marked Exhibit 232 (sic). This is</p> <p>24 an e-mail between you and Eric Santos --</p> <p>25 A. Correct.</p> <p style="text-align: right;">Page 337</p>	<p>1 you know, a new type of browser, how a new -- we were</p> <p>2 building a new type of browser, a new type of -- you</p> <p>3 know --</p> <p>4 Q. Let me ask the question a different way.</p> <p>5 A. Okay.</p> <p>6 Q. Were you worried about Orkut doing something</p> <p>7 to make your life difficult or were you only worried</p> <p>8 about just the standard technical measures that Orkut</p> <p>9 had in place?</p> <p>10 A. We were worried about standard technical</p> <p>11 measures to -- to block -- block sites. And this is</p> <p>12 through every aspect of this new type of browser.</p> <p>13 Because it was not a browser -- the browser we were</p> <p>14 building was not like a typical browser. So in the</p> <p>15 beginning everything is new until people get used to it.</p> <p>16 And so we -- we -- like any good company, we were</p> <p>17 exploring every -- every technical possibility, every --</p> <p>18 every -- it was a -- actually, to understand how do you</p> <p>19 build something that you can scale and have tens of</p> <p>20 millions of users and a new type of browser that can</p> <p>21 interact with many sites, build applications that</p> <p>22 interact with sites, and create -- I mean, it was a very</p> <p>23 ambitious project. So naturally, like any good company</p> <p>24 building something, that was fairly revolutionary. I</p> <p>25 mean, the -- we -- we -- conversations exploring every</p> <p style="text-align: right;">Page 339</p>
<p>1 Q. -- and someone named Joao?</p> <p>2 A. Yep.</p> <p>3 Q. Who is Joao?</p> <p>4 A. Joao was another programmer within the</p> <p>5 company.</p> <p>6 Q. If you look at the e-mail that's from you --</p> <p>7 I'm trying to figure this out. It's -- it's from you to</p> <p>8 Eric Santos dated April 15th, 2007, at 4:48 a.m.</p> <p>9 A. Yep.</p> <p>10 Q. And you say "Tell me everything Orkut can do</p> <p>11 to make our life difficult."</p> <p>12 Do you see that?</p> <p>13 A. Where?</p> <p>14 Q. On the second page, last paragraph.</p> <p>15 A. Yep.</p> <p>16 Q. Why were you concerned about that?</p> <p>17 A. I think I've said this over and over again.</p> <p>18 We were embarking on completely new territory which had</p> <p>19 no legal precedence, no user precedence except contact</p> <p>20 imports which were our best reference point. And we</p> <p>21 were working in an amount of data imported that were</p> <p>22 more than -- way above what had ever been done before.</p> <p>23 And we were dealing with fairly advanced technology that</p> <p>24 was -- that was trying to create something new. So we</p> <p>25 were interested in every possible possibility of how,</p> <p style="text-align: right;">Page 338</p>	<p>1 type -- every subject took place.</p> <p>2 (Plaintiff's Exhibit No. 234 marked for</p> <p>3 identification.)</p> <p>4 MR. CHATTERJEE: 234 previously marked as</p> <p>5 Exhibit 145.</p> <p>6 Q. Have you seen this document before, Mr.</p> <p>7 Vachani?</p> <p>8 A. Yes.</p> <p>9 Q. What is this document?</p> <p>10 A. It's a collection of different presentations</p> <p>11 that -- different Power presentations.</p> <p>12 Q. Were they things that you put together?</p> <p>13 A. They were things that many people in the</p> <p>14 company put together. But I've seen -- I've seen all</p> <p>15 the presentations in here.</p> <p>16 Q. Is there any particular reason why we haven't</p> <p>17 been able to find copies of these presentations in your</p> <p>18 e-mails?</p> <p>19 A. In my e-mails? I don't. But I'm sure -- I'm</p> <p>20 sure they're -- they're in my e-mails. But they're</p> <p>21 probably not under -- I don't know how you searched.</p> <p>22 Q. When --</p> <p>23 A. But these things have existed and you've had</p> <p>24 them for a long, long time.</p> <p>25 Q. I don't need you to argue with me.</p> <p style="text-align: right;">Page 340</p>

<p>1 A. Okay.</p> <p>2 Q. I'm just asking a simple question if you know</p> <p>3 why they're not in your e-mails.</p> <p>4 A. No worries.</p> <p>5 Q. Do you know why they're not in your e-mails?</p> <p>6 A. I don't. But I'm sure -- these are -- they</p> <p>7 are -- they are in my e-mails.</p> <p>8 Q. Okay. This --</p> <p>9 A. In different -- they're not -- these are all</p> <p>10 different presentations. There are thousands -- there</p> <p>11 are hundreds of presentations.</p> <p>12 Q. So this first power.com presentation, just the</p> <p>13 first one, do you know when it was created?</p> <p>14 A. This one was I believe created around December</p> <p>15 of -- around December of two thousand -- around the same</p> <p>16 time when we were launching Facebook, launching our</p> <p>17 power.com. Around that time.</p> <p>18 Q. So if you turn to page 0309. Do you see that?</p> <p>19 A. Yep.</p> <p>20 Q. There's a reference here to "Walled gardens</p> <p>21 become more open" and you refer to Facebook Connect.</p> <p>22 A. Yes.</p> <p>23 Q. What did you mean when you were referring to</p> <p>24 walled gardens?</p> <p>25 A. A walled garden is a -- a terminology that</p> <p style="text-align: right;">Page 341</p>	<p>1 saying it was becoming more open was because Facebook</p> <p>2 Connect, for example, was available and allowed people</p> <p>3 to at least have an entry point to the Facebook</p> <p>4 environment?</p> <p>5 A. No. What we were saying is that this kind of</p> <p>6 force people is -- these are structural possibilities</p> <p>7 that instead of something only with -- with Facebook</p> <p>8 where everything's closed and restricted and defined</p> <p>9 only by Facebook and shutting off all other innovation</p> <p>10 except by this one way, there could be other structural</p> <p>11 possibilities such as what Google was working on, which</p> <p>12 was trying to create.</p> <p>13 Q. Okay.</p> <p>14 A. You know, they're -- they're -- I mean, we're</p> <p>15 saying that they were all possibilities. They -- we</p> <p>16 don't know. These were all --</p> <p>17 Q. Right.</p> <p>18 A. We don't know how they were going to go. So</p> <p>19 we saw that Facebook could become more open. And they</p> <p>20 -- you know, but again, at that time everything was new.</p> <p>21 Q. Right. Your statement was they're -- they're</p> <p>22 becoming more open, who knows if it's a good idea or</p> <p>23 not?</p> <p>24 A. Yeah. We don't know how this is going to</p> <p>25 happen. There are many ways they could become more</p> <p style="text-align: right;">Page 343</p>
<p>1 refers to sites that are completely closed and have only</p> <p>2 one standard or one way to access their site and define</p> <p>3 all the rules and have traditionally by many people been</p> <p>4 seen as things that are not good for the future of the</p> <p>5 web.</p> <p>6 Q. Okay.</p> <p>7 A. That's -- that's typically the -- the</p> <p>8 understanding that commonly -- I mean, there are many</p> <p>9 people have different terms of that.</p> <p>10 Q. So --</p> <p>11 A. AOL was at one point considered a walled</p> <p>12 garden. It was a closed system that everything was</p> <p>13 happening inside there and nothing -- you know, it was</p> <p>14 not -- it was a hundred percent controlled by AOL. And</p> <p>15 this -- this was -- what we were building is something</p> <p>16 that we saw as an -- as an alternative to a walled</p> <p>17 garden. Something that was much more open.</p> <p>18 Q. So a walled garden -- let me make sure I</p> <p>19 understood. A walled garden was a web site service that</p> <p>20 restricted other people's ability to access and take or</p> <p>21 use data from the web site?</p> <p>22 A. So you're saying only --</p> <p>23 Q. Wait. Wait. Was that a yes?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And -- and -- and the reason you are</p> <p style="text-align: right;">Page 342</p>	<p>1 open. They could be open with -- with one site</p> <p>2 controlling everything, they could be open with</p> <p>3 something like Open Social, they could be open with</p> <p>4 something like what Power was creating. There are many</p> <p>5 different hypothetical possibilities.</p> <p>6 And obviously on the next page we defined what</p> <p>7 we sized wall garden initiatives and then we defined</p> <p>8 shared gates between gardens.</p> <p>9 Q. What did you mean when you referred to shared</p> <p>10 gates between gardens?</p> <p>11 A. Shared gates are typically industry standards.</p> <p>12 Rather than one company controlling the entire standard,</p> <p>13 one of the initiatives were many sites get together such</p> <p>14 as Open ID, Open Social, and -- and Oauth, Open</p> <p>15 Authorization, which was a shared standard for how to --</p> <p>16 rules on how to access sites. And as you know, when we</p> <p>17 talk to many sites they would say, look, we have no</p> <p>18 problem for you accessing to do things but, you know, if</p> <p>19 -- are there other open standards that you could be able</p> <p>20 to use. And that was typically the conversations of,</p> <p>21 you know, open -- open -- open standards basically.</p> <p>22 That's what we referred to when creating shared gates.</p> <p>23 So kind of open standards or other types of things that</p> <p>24 are --</p> <p>25 Q. Open -- open standard -- open gates are --</p> <p style="text-align: right;">Page 344</p>

<p>1 A. Open standards are one way to do it. The 2 other way to do it is basically create tools for users 3 to access their own information without any standards. 4 Q. Unrestricted data portability? 5 A. Yeah. Unrestricted data portability. That's 6 another way. 7 Q. That's -- that's what you're getting at? 8 A. Yeah. 9 Q. And -- and Facebook's methodology or approach 10 wasn't consistent with that in your view? 11 A. At that -- at that time, the fact that they 12 limited many, you know, different activities and data 13 portability or any other way to access besides with 14 Facebook Connect was something that us and I -- I think 15 many people in the industry had, you know, similar 16 opinions on -- on this issue. That it -- you know, that 17 was definitely not -- 18 Q. You'd agree with me at the time the launch 19 promotion was raised, was started -- 20 A. Yeah. 21 Q. -- your views on data portability were not the 22 same as Facebook's views on data portability? 23 A. I think our actions on data portability were 24 not the same. Facebook may have had publicly stated 25 views, but we believe that Facebook's actions were this</p> <p style="text-align: right;">Page 345</p>	<p>1 companies and we said, wait, these guys are not using 2 Facebook Connect, they're working, what's going on here. 3 So we were -- we were trying to understand, but there 4 was no clear answer. But we obviously new that Facebook 5 was -- 6 Q. Did you ever reach out to Facebook and ask 7 them? 8 A. We did -- actually, had -- we -- we tried -- 9 we tried -- we didn't -- we tried to make conversation. 10 Q. Prior to the launch promotion, did you ever 11 reach out to Facebook and ask them? 12 A. Ask them what? 13 Q. Ask them if you could access the Facebook web 14 site in a way other than Facebook Connect. 15 A. I don't believe that we had a direct 16 conversation. 17 Q. Okay. You were confused as to what the 18 intentions or objectives of Facebook were prior to the 19 launch promotion, correct? 20 A. Correct. 21 Q. And notwithstanding that confusion, you didn't 22 take any effort to reach out to Facebook and ask them 23 did you? 24 MR. FISHER: Objection. Vague. 25 Argumentative. Assumes facts --</p> <p style="text-align: right;">Page 347</p>
<p>1 is the only way to connect to Facebook. Any other way, 2 we're going to, you know, threat -- threaten this 3 company. 4 Q. So let me reframe the question then to be more 5 precise in that way. 6 A. Sure. 7 Q. Prior to the launch promotion, you knew that 8 Facebook's approach, their actual technical approach to 9 data portability was different than the approach and 10 views you had. 11 A. That's correct, yes. 12 Q. And you knew that they didn't -- would not 13 want Power encouraging data portability in the way that 14 it was approaching the Facebook web site? 15 A. Actually, we had no idea because they made 16 public statements saying one thing. Their actions 17 stated other things. There was a lot -- it was a very 18 convoluted message that they had. 19 Q. You knew that their actions indicated that 20 they did not want to allow for data portability -- 21 MR. FISHER: Objection. Vague. 22 Q. BY MR. CHATTERJEE: -- other than through 23 Facebook Connect, correct? 24 A. Actually, we didn't know. We didn't know. As 25 you just saw, we went through exercises and we saw other</p> <p style="text-align: right;">Page 346</p>	<p>1 THE WITNESS: As I said -- 2 MR. FISHER: -- not in evidence. Lacks 3 foundation. 4 THE WITNESS: Face -- Facebook was not our top 5 priority at that time. And we were doing something that 6 we felt and we continue to feel was completely 7 legitimate. So if, you know, the conversation -- we -- 8 we -- If Facebook had an issue, they would -- they would 9 tell us and then we would have a conversation with it -- 10 with it and we would try to solve it. 11 Q. BY MR. CHATTERJEE: So you wanted to ask for 12 forgiveness instead of permission? 13 A. It's not about asking for forgiveness. It's 14 just what -- that's what -- that's we did. 15 Q. So I'm going to ask you a really simple -- 16 A. That's what we did. 17 Q. -- question, Mr. Vachani. 18 MR. FISHER: Objection. Argumentative. 19 Q. BY MR. CHATTERJEE: Prior to accessing the 20 Facebook web site -- 21 A. Yes. 22 Q. -- through the launch promotion, did you or 23 did you not contact Facebook and ask for their views on 24 it? 25 MR. FISHER: Objection. Vague. Asked --</p> <p style="text-align: right;">Page 348</p>

<p>1 THE WITNESS: I don't know --</p> <p>2 MR. FISHER: -- and answered.</p> <p>3 THE WITNESS: I don't know if guys in our</p> <p>4 company did or did not. But it was -- I don't -- I</p> <p>5 don't remember us having a -- a meeting. But we may</p> <p>6 have.</p> <p>7 Q. BY MR. CHATTERJEE: So as the corporate</p> <p>8 designee for Power Ventures, you have no recollection of</p> <p>9 anyone at Power reaching out to Facebook and asking them</p> <p>10 if the Power approach was okay or not?</p> <p>11 MR. FISHER: Vague. Asked and answered.</p> <p>12 Mischaracterizes prior testimony.</p> <p>13 THE WITNESS: I don't believe -- I don't</p> <p>14 believe so. I don't think it -- it -- to us -- to us it</p> <p>15 was, you know, we were -- we were just doing standard</p> <p>16 access to data which was already being done across the</p> <p>17 web. So we didn't think -- we said you know what, the</p> <p>18 better -- let's -- let's do what everybody's doing,</p> <p>19 including Facebook, use the same -- same -- same</p> <p>20 standards that Facebook is using. And so we said if</p> <p>21 Facebook's doing this, if other people are doing this,</p> <p>22 you know, it's not -- it's probably not the highest</p> <p>23 priority, but obviously if -- if they have an issue we</p> <p>24 would be happy to sit down and -- and discuss it and</p> <p>25 work it out and -- and -- and seek solutions.</p> <p style="text-align: right;">Page 349</p>	<p>1 Q. Like the Myspace thing?</p> <p>2 A. I think with -- even -- even with Orkut in the</p> <p>3 early days, had -- I don't know if it was a verbal or we</p> <p>4 had a conversation on the issue.</p> <p>5 Q. Other than that?</p> <p>6 A. Cease and desist letters?</p> <p>7 Q. Correct.</p> <p>8 A. We had conversation with Twitter, but I don't</p> <p>9 believe there was a cease and desist letter. I believe</p> <p>10 it was a -- a conversation, you know, hey, we want to</p> <p>11 understand the -- we want to understand how you're</p> <p>12 accessing the site, we want to understand your policies,</p> <p>13 your procedures. Very standard conversation that we had</p> <p>14 with almost everyone. That we usually had with product</p> <p>15 managers, not with lawyers.</p> <p>16 Q. Any other -- any other notifications from</p> <p>17 people telling Power to stop doing anything that it was</p> <p>18 doing?</p> <p>19 A. I think that we've discussed our conversation</p> <p>20 with hi5. We discussed our conversation with Myspace.</p> <p>21 As I said earlier, I don't believe we had any</p> <p>22 conversation with Meebo, but I may be mistaken of that.</p> <p>23 You may -- if you found, you can remind me. I don't --</p> <p>24 if it was, it was minor.</p> <p>25 Q. So --</p> <p style="text-align: right;">Page 351</p>
<p>1 MR. CHATTERJEE: Let's take a five-minute</p> <p>2 break. I think I'm done, but I just want to check with</p> <p>3 her and make sure I didn't miss anything.</p> <p>4 THE VIDEOGRAPHER: We are going off the</p> <p>5 record. The time is 6:03 p.m.</p> <p>6 (Whereupon a break was taken from 6:03 to</p> <p>7 6:07.)</p> <p>8 THE VIDEOGRAPHER: We are back on the record.</p> <p>9 The time is 6:07 p.m.</p> <p>10 Q. BY MR. CHATTERJEE: Mr. Vachani --</p> <p>11 A. I just wanted to be clear. We -- is our</p> <p>12 intention to finish everything today?</p> <p>13 Q. You're going to hear from me in just a minute.</p> <p>14 A. Okay. Please go. Sorry.</p> <p>15 Q. Mr. Vachani, did you receive any other cease</p> <p>16 and desist letters other than the one you received from</p> <p>17 Facebook?</p> <p>18 A. On which issue?</p> <p>19 Q. With respect to accessing -- well, what other</p> <p>20 issues did you receive cease and desist letters?</p> <p>21 A. I'm saying back I think a long -- I mean, I</p> <p>22 don't know if we had a cease and desist. But we had</p> <p>23 conversations on -- conversations on -- on, like, is</p> <p>24 this fishing and determined that it wasn't. Because it</p> <p>25 was a legitimate --</p> <p style="text-align: right;">Page 350</p>	<p>1 A. Google. I'm just trying to go through the --</p> <p>2 the main companies. Twitter. To my best of my</p> <p>3 knowledge, no. But again, I may be -- I may be missing</p> <p>4 a minor one.</p> <p>5 Q. So we spent a fair amount of time talking</p> <p>6 about dynamically associated IP addresses.</p> <p>7 A. Yes.</p> <p>8 Q. I think you said that technology was</p> <p>9 implemented from the very beginning?</p> <p>10 A. Well, as you can see, it's the technology of</p> <p>11 dynamic and rotating IPs was a conversation that was</p> <p>12 part of our company's -- you know, built into our</p> <p>13 core -- our core -- core technology from the -- you</p> <p>14 know, from the beginning. Obviously technologies</p> <p>15 continue to evolve, continue to learn, continue to</p> <p>16 become more dynamic. And you can see we had very</p> <p>17 extensive issues on scalability, on how you deal with,</p> <p>18 you know, creating ground-breaking innovation.</p> <p>19 Q. I -- I -- I understand that. Very limited</p> <p>20 question.</p> <p>21 A. Okay. Please.</p> <p>22 Q. The dynamically associated IP address --</p> <p>23 A. Yes.</p> <p>24 Q. -- that was something around from the</p> <p>25 beginning?</p> <p style="text-align: right;">Page 352</p>

<p>1 A. Yes.</p> <p>2 Q. Okay. And the Amazon option to -- to -- to go</p> <p>3 to them to have an unlimited number of IP addresses was</p> <p>4 also implemented shortly -- shortly before the launch?</p> <p>5 A. It was -- it wasn't available in the</p> <p>6 beginning. It was -- you know, we had to work with many</p> <p>7 different places. Amazon later on, I don't know when,</p> <p>8 they opened up the system where they had that -- their</p> <p>9 web services. When that -- that made -- that made --</p> <p>10 that made that solution that we had already built just</p> <p>11 more -- more robust.</p> <p>12 Q. Okay. And -- and was that before or after the</p> <p>13 launch promotion, if you know?</p> <p>14 A. I don't remember.</p> <p>15 Q. Okay.</p> <p>16 A. I don't know when it was. Whenever Amazon</p> <p>17 made it available, we started looking at it.</p> <p>18 Q. Other -- other than those two technical</p> <p>19 solutions, was there anything else that Power did to</p> <p>20 ensure that Power users could access the various social</p> <p>21 networking web sites that -- that -- that were part of</p> <p>22 power.com's architecture?</p> <p>23 A. Well, I'm -- I mean, I think in our -- our</p> <p>24 browser, you know, we went through a lot of different</p> <p>25 optimizations to make sure that our browser would be</p> <p style="text-align: right;">Page 353</p>	<p>1 Q. So the other measures would be embodied in the</p> <p>2 code if it?</p> <p>3 A. I mean, it's just everything is in the code</p> <p>4 or -- and in the technical set that's in our</p> <p>5 presentations, etcetera. I mean, that I could think of.</p> <p>6 There's nothing like -- the core -- the core components</p> <p>7 are our browser, our proxy. We've covered the core</p> <p>8 ones.</p> <p>9 Q. Right. So you -- you -- you can't identify</p> <p>10 anything separate today, but the code would be the best</p> <p>11 evidence of what it was?</p> <p>12 A. The code -- the code or --</p> <p>13 Q. Technical documents?</p> <p>14 A. Or technical documents.</p> <p>15 Q. Got it.</p> <p>16 A. Some things that were never -- might have</p> <p>17 never been implemented but --</p> <p>18 Q. Okay.</p> <p>19 A. -- or at least were discussed.</p> <p>20 MR. CHATTERJEE: All right. So at this point</p> <p>21 I'm going to make two observations. One is I don't</p> <p>22 think Mr. Vachani has answered many of the questions</p> <p>23 that I've asked. And the second is I don't think he was</p> <p>24 adequately prepared as a 30(b)(6) witness. An hour of</p> <p>25 time without reviewing any documents whatsoever or</p> <p style="text-align: right;">Page 355</p>
<p>1 compatible when -- when you access a site. You know, I</p> <p>2 don't know --</p> <p>3 Q. What do you mean by compatible?</p> <p>4 A. So since we built -- we had built a new type</p> <p>5 of browser. It was, you know, not a traditional browser</p> <p>6 where you downloaded it. It was one where it was a</p> <p>7 web -- a web-based browser, so you could browse, but you</p> <p>8 were -- you were -- it was like a browser within a</p> <p>9 browser. So that's the best way to think about it. So</p> <p>10 there were range of -- just standard issues on how to</p> <p>11 make -- how to make a browser within a browser work and</p> <p>12 when you visit sites and things like that. So these</p> <p>13 are -- these are the kind of issues that --</p> <p>14 Q. Right. What about -- what about technology</p> <p>15 specifically directed towards efforts a web site would</p> <p>16 use to limit access, in other words slow it down --</p> <p>17 A. Yeah.</p> <p>18 Q. -- or to prevent access?</p> <p>19 A. Prevent access?</p> <p>20 Q. Other than -- you know, were there any other</p> <p>21 technologies employed by Power?</p> <p>22 A. I mean, you have access to -- I mean, our --</p> <p>23 our -- this is -- we have a pretty, pretty broad</p> <p>24 technology set and, you know, presentations that define</p> <p>25 all the different components of our system. So --</p> <p style="text-align: right;">Page 354</p>	<p>1 having really any -- any meaningful understanding of any</p> <p>2 of the issues that are identified in the topics. We're</p> <p>3 going to reserve our rights to review the deposition</p> <p>4 transcript, initiate a meet and confer, and decide</p> <p>5 whether he needs to come back.</p> <p>6 At this point I think we'll suspend the</p> <p>7 deposition. You don't have to come back tomorrow</p> <p>8 because we want to review the transcript and then figure</p> <p>9 out what to do. I don't want to waste our time tomorrow</p> <p>10 if -- if we're -- you know, if we're just going to have</p> <p>11 nonresponsive answers like we've had today. So we'll</p> <p>12 suspend at this point. We'll reserve our rights. I'm</p> <p>13 sure you're going to reserve your rights. We'll look at</p> <p>14 the transcript and then we'll figure out what to do.</p> <p>15 MR. FISHER: Obviously we disagree with your</p> <p>16 characterization of the deposition, and we think Mr.</p> <p>17 Vachani has been very forthcoming. But as you can</p> <p>18 reserve your rights, we'll reserve ours.</p> <p>19 MR. CHATTERJEE: Got it.</p> <p>20 THE WITNESS: Yeah. I mean, I think I --</p> <p>21 I'm -- the reason I'm very familiar with -- with every</p> <p>22 aspect of the company and I think my deposition and</p> <p>23 arguments, obviously, in our opinion were very</p> <p>24 forthright, transparent, and we've been --</p> <p>25 MR. CHATTERJEE: Mr. Vachani, your opinion on</p> <p style="text-align: right;">Page 356</p>

<p>1 this doesn't matter. The record speaks for itself.</p> <p>2 THE WITNESS: Okay.</p> <p>3 MR. CHATTERJEE: You have not answered my</p> <p>4 questions. I think the record shows that. I'll take it</p> <p>5 to court.</p> <p>6 THE WITNESS: In your opinion. Would you</p> <p>7 please say in my opinion?</p> <p>8 MR. CHATTERJEE: No. The record shows it.</p> <p>9 THE WITNESS: It's not the record. It's your</p> <p>10 opinion.</p> <p>11 MR. CHATTERJEE: The record shows it. Mr.</p> <p>12 Vachani, you -- you'll have the chance to review the</p> <p>13 transcript. It will speak for itself. And we'll have</p> <p>14 the judge make the call if we need him to.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MR. CHATTERJEE: I am going to try to avoid</p> <p>17 that, because I don't want to drag you here if we don't</p> <p>18 have to.</p> <p>19 THE WITNESS: Okay.</p> <p>20 MR. CHATTERJEE: But -- but we've made our</p> <p>21 objection. Your counsel has responded. I haven't asked</p> <p>22 you additional questions. We're going to suspend the</p> <p>23 deposition at this point in time. Thank you.</p> <p>24 THE WITNESS: Thank you.</p> <p>25 THE VIDEOGRAPHER: This ends videotape number</p> <p style="text-align: right;">Page 357</p>	<p>1 DEPOSITION OFFICER'S CERTIFICATE</p> <p>2 (Civ. Proc. § 2025.520(e))</p> <p>3 STATE OF CALIFORNIA)</p> <p style="text-align: center;">) ss</p> <p>4 COUNTY OF CONTRA COSTA)</p> <p>5</p> <p>6 I, CHERREE P. PETERSON, hereby certify:</p> <p>7 I am a duly qualified Certified Shorthand</p> <p>8 Reporter, in the State of California, holder of</p> <p>9 Certificate Number CSR 11108 issued by the Court</p> <p>10 Reporters Board of California and which is in full force</p> <p>11 and effect. (Fed. R. Civ. P. 28(a)).</p> <p>12 I am authorized to administer oaths or</p> <p>13 affirmations pursuant to California Code of Civil</p> <p>14 Procedure, Section 2093(b) and prior to being examined,</p> <p>15 the witness was first duly sworn by me. (Fed. R. Civ.</p> <p>16 P. 28(a), 30(f)(1)).</p> <p>17 I am not a relative or employee of any attorney</p> <p>18 or counsel of any of the parties, nor am I a relative or</p> <p>19 employee of such attorney or counsel, nor am I</p> <p>20 financially interested in this action. (Fed. R. Civ. P.</p> <p>21 28).</p> <p>22 I am the deposition officer that</p> <p>23 stenographically recorded the testimony in the foregoing</p> <p>24 deposition and the foregoing transcript is a true record</p> <p>25 of the testimony given by the witness. (Fed. R. Civ. P.</p> <p style="text-align: right;">Page 359</p>
<p>1 four, and this ends the deposition of Power Ventures,</p> <p>2 Inc., volume one. The time is 6:14 p.m. on January 9th</p> <p>3 2012, and we are off the record.</p> <p>4 (Discussion off the record.)</p> <p>5 MR. FISHER: I would like a PTX and a PDF</p> <p>6 exhibits. And I don't need a like hard copy.</p> <p>7 THE REPORTER: So no paper?</p> <p>8 MR. FISHER: I'd rather not have paper, if</p> <p>9 possible.</p> <p>10 (Whereupon the proceedings were concluded at</p> <p>11 6:14 p.m.)</p> <p>12 ---oOo---</p> <p>13 //</p> <p>14 //</p> <p>15 I have read the foregoing deposition</p> <p>16 transcript and by signing hereafter, approve same.</p> <p>17</p> <p>18 Dated_____.</p> <p>19</p> <p>20 _____</p> <p style="text-align: center;">(Signature of Deponent)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 358</p>	<p>1 30(f)(1)).</p> <p>2 Before completion of the deposition, review of</p> <p>3 the transcript (XX) was () was not requested. If</p> <p>4 requested, any changes made by the deponent (and</p> <p>5 provided to the reporter) during the period allowed, are</p> <p>6 appended hereto. (Fed. R. Civ. P. 30(e)).</p> <p>7</p> <p>8 Dated: JANUARY 13, 2012</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 360</p>